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# An Access to Justice Case Study: A Practitioner's Call for Leadership in Implementing Homeownership Legal Clinics and Equity Protection Partnerships

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# **An Access to Justice Case Study: A Practitioner's Call for Leadership in Implementing Homeownership Legal Clinics and Equity Protection Partnerships**

**Daniel Friedson\***

## INTRODUCTION

There is a curious neurological condition sometimes suffered by victims of stroke called, in the prose of medical understatement, 'the neglect of the left.' The stricken patient acts as if nothing is amiss, yet reports that his left side has disappeared. When shown his paralyzed arm, he asserts that it belongs to someone else. He neglects the left side of his body in dressing and grooming, fails to shave one side of his face or to comb his hair on one side, and cannot put on eyeglasses or insert

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\* Daniel Friedson dedicated the first five years of his legal career providing free legal counsel to first-time homebuyers in impoverished locations throughout St. Louis. He spent the past five years of his legal career as a clinical law professor at the University of Pittsburgh School of Law providing free legal services to homeowners in the Pittsburgh region. Professor Friedson developed an educational curriculum for the legal aspects of homeownership. In 2006, as Director of the Community Economic Development Clinic at the University of Pittsburgh, Professor Friedson, along with Irene McLaughlin, received a "Winning Strategies" *Innovation Award* from NeighborWorks America for their development of a legal service and legal educational curriculum.. Ms. McLaughlin's long-dedicated career to homeowners was critical to the development of the Equity Protection Partnership model.

dentures – for half of him, in his own mind, does not exist . . . . In the individual, such a condition of paralysis and denial evokes compassion; in the State, it merits contempt.

— Francis T. Murphy<sup>1</sup>

The pressure is on for law schools to teach more practical, professional skills to law students.<sup>2</sup> Echoing this sentiment, an influential treatise, written in 1992 and updated in 2007 on best practices for legal education, commonly referred to as the “Carnegie Report,” emphasizes that law students need to be instructed in the professional arts such as courtroom or transactional negotiations.<sup>3</sup> Additionally, the Carnegie Report places access to justice and seeking justice as two core values of the legal profession.<sup>4</sup> Within this context, the housing crisis can be traced back, in part, to bad advice provided by non-lawyers in the non-profit sector.<sup>5</sup> Another major cause of foreclosures and homeowners being forced into bad loans is the death of a family member who failed to leave an estate plan.

As a legal practitioner in the non-profit housing sector, the author has worked extensively with troubled and financially insecure homeowners and prospective homebuyers, providing clinical instruction on various housing-related issues. One vital

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1. Daniel T. Friedson, *Greenlining Toward a Community of Local Entrepreneurship, Home Ownership, and Quality of Life*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 183, 185 (2000) (quoting Francis T. Murphy, *Elimination of Poverty Fulfills Constitutional Principles*, 215 N.Y. L.J., May 1, 1996, at 84).

2. See generally ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP, 16-26, 188-97 (2007) [hereinafter CARNEGIE REPORT]; Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648 (1996); SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

3. See generally CARNEGIE REPORT, *supra* note 2.

4. *Id.* at 197.

5. Jeff Horwitz & Dave Jamieson, *Home Loans Brokered by Nonprofits Helped Fuel the Housing Crisis*, THE HUFFINGTON POST, Oct. 1, 2009, [http://www.huffingtonpost.com/2009/10/01/home-loans-brokered-by-no\\_n\\_306520.html](http://www.huffingtonpost.com/2009/10/01/home-loans-brokered-by-no_n_306520.html).

partner in this work has been NeighborWorks of Southwestern Pennsylvania, a home ownership counseling center. It repeatedly encountered a common problem called “tangled title,” or clouded title, that it could not solve without local legal assistance. Transactional legal services were provided through the generosity of The Heinz Endowments and The Pittsburgh Foundation to transfer title to owner occupants who have an equitable interest in their home but do not have their name on the property deed. The private foundation sector enabled University of Pittsburgh School of Law students to provide pro bono services, in a clinical setting, for hundreds of compromised homeowners. Students conducted property searches, title report reviews, conveyance strategies, and negotiations for waivers of certain fees.

Experience has demonstrated that, in reviewing the success of these homeowner-homebuyer counseling programs, advisors live and die by performance statistics. Indeed, somewhat myopically, advisors are generally concerned with program attendance and other quantitative output benchmarks. As a result of this numbers-driven review, inherent deficiencies in the process are manifestly overlooked. Foremost of these oversights is the glaring fact that, in a large majority of housing-related transactions involving non-profit social service organizations, lawyers are not on-hand to offer advice and counsel.<sup>6</sup> In the absence of counsel, clients are often not provided with critical information regarding the implications of a particular transaction; more troubling, clients often are not posed with difficult and pragmatic questions about their ability or their heirs’ ability to meet the financial obligations the transaction mandates over the long term.

This Article contends that the advice of trained legal counsel would be mutually beneficial to housing counseling organizations and clinical legal education. After all, lawyers have an ethical

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6. See Michael Braunstein and Hazel Genn, *Odd Man Out: Preliminary Findings Concerning the Diminishing Role of Lawyers in the Home-Buying Process*, 52 OHIO ST. L.J. 469, 472 (1991); see also Creola Johnson, *Stealing the American Dream: Can Foreclosure-Rescue Companies Circumvent New Laws Designed to Protect Homeowners from Equity Theft?*, 2007 WIS. L. REV. 649, 651-52 (2007); *infra* Part II (offering further exploration of how legal services are used within the NeighborWorks system). Of all the housing counseling programs, in this author’s opinion, NeighborWorks is the most comprehensive and competent organization. It is studied here to discover room for improvement, even among our best resources.

duty to zealously protect their clients' best interests and to tell them things they may not want to hear.<sup>7</sup> With these obvious needs in the forefront, what better training ground is there for law students than assisting with such matters? Although this Article does not profess to replace all housing counselors with lawyers, it argues that a partnership should be formed between the two.

Part I of this Article provides a general overview of the current market trends that support an Equity Protection Partnership between law schools and non-profit organizations and, in turn, highlights the benefits achieved through one such partnership between the University of Pittsburgh School of Law and a local social service organization – NeighborWorks of Southwestern Pennsylvania. Part II provides the results of a survey (hereinafter “Homeowner Legal Needs Survey”) compiled by the author pertaining to the sufficiency of legal services offered by NeighborWorks America nationally.<sup>8</sup> Part III applies principles of best practices from the Carnegie Report to a 2007–2008 survey of transactional law clinics (hereinafter “Transactional Survey”).<sup>9</sup> Finally, Part IV concludes that law schools need to increase their participation in mending the housing crisis by expanding clinical service programs to certain homeowners.

Recent economic events crippling our housing market, and essential aspects of the American Dream tied to home ownership, have exposed a systemic pattern akin to “neglect of the left.” It is within and through recognition of this condition that there is

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7. See, e.g., PENNSYLVANIA RULES OF PROF'L CONDUCT, 42 PA. CONS. STAT. ANN. R. 2.1 (West 2008) (“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.”). The Comments further elaborate: “Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront.” *Id.* at cmt. 1.

8. Daniel Friedson & Erika Myers, National HomeOwnership Center Participant Legal Needs Survey (2005) [hereinafter Homeowner Legal Needs Survey] (unpublished survey, on file with author).

9. Daniel Friedson, Transactional Survey, Conducted at the 6th Annual Faculty Conference and Workshop: Teaching Transactional and Exempt Organization Law in the Classroom, in the Clinic and in Field Placements (2007-2008) [hereinafter Transactional Survey] (unpublished survey, on file with author).

revealed a logical and healthful opportunity for the legal education community to aid in the recovery of the national housing economy. Simultaneously, law students gain valuable practical experience through a program that inherently emphasizes the civic obligations implicit to the legal profession as should be promoted by the State.<sup>10</sup>

## I. MARKET TRENDS SUPPORT THE EQUITY PROTECTION PARTNERSHIP MODEL

### A. Our Working Model

In 2005, in an attempt to address a number of the concerns previously identified – notably the provision of low-cost legal services to financially insecure homebuyers and homeowners – the University of Pittsburgh School of Law Economic Development Clinic (CED) formed an Equity Protection Partnership (EPP) with a local social service organization, now known as NeighborWorks of Southwestern Pennsylvania (NWSP) (formerly Neighborhood Housing Services). NWSP is a non-profit organization which promotes and protects homeownership for low to moderate-income households. Specifically, NWSP formed a partnership with the CED for students to provide counsel in consumer credit law, including: Truth-In-Lending, debt collection practices and quieting title.

Supported by the congressionally chartered Neighborhood Reinvestment Corporation, the NeighborWorks Network consisted of 235 organizations in 2005. Furthermore, NeighborWorks had designated seventy-seven organizations in thirty-two states as approved HomeOwnership Centers (HOCs). To earn the NeighborWorks' HomeOwnership Center designation, an organization had to adopt uniform business practices approved by NeighborWorks. The seventy-seven designated HOCs shared a common profile of having once been locally run for ten to thirty years, yet had only become NeighborWorks HomeOwnership Centers within the five years immediately prior to this author's 2005 Homeowner Legal Needs Survey.

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10. Editorial, *First, They Get Rid of the Law Clinics*, N.Y. TIMES, Apr. 11, 2010, available at <http://www.nytimes.com/2010/04/12/opinion/12mon3.html>.

Currently, a major overhaul is being conducted on the use of these congressionally chartered resources in response to the American housing economy crisis of 2008.

### B. Identifying a Legal Service Gap

Many homeowners or prospective home buyers suffer from a lack of legal sophistication. This is particularly true for new homeowners and those individuals who may be the second or third generation living in the family home.<sup>11</sup> As a result, predatory lending and foreclosures have become a national epidemic.<sup>12</sup> Indeed, the troubling combination of lack of familiarity with the process, the confusing nature of loan agreements, and the conspicuous absence of legal counsel from the equation, has been a major contributor to the nation's modern housing crisis.

Experience has shown that the most vulnerable populations to predatory lending and foreclosure are existing homeowners who strip equity from their homes with bad second mortgages.<sup>13</sup> In particular, minority and elderly homeowners are most affected by this problem.<sup>14</sup> Once again, this problem stems, in large part, from unfamiliarity with the process and an inability to obtain affordable legal advice. Although some states have anti-predatory lending laws (APL-States) to prohibit egregious lending practices, many do not (non-APL-States).<sup>15</sup> Moreover, and as previously identified, additional gaps in legal services result in the stripping of equity from homes when a home is in disrepair and there is no

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11. See A. Mechele Dickerson, *Over-Indebtedness, the Subprime Mortgage Crisis, and the Effect on U.S. Cities*, 36 FORDHAM URB. L.J. 395, 413 (2009); Carole O. Heyward, *HOPE for Homeowners: Too Little, Too Late*, 18 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 27 (2008); Creola Johnson, *Stealing the American Dream: Can Foreclosure-Rescue Companies Circumvent New Laws Designed to Protect Homeowners from Equity Theft?*, 2007 WIS. L. REV. 649 (2007); Patricia A. McCoy, *A Behavioral Analysis of Predatory Lending*, 38 AKRON L. REV. 725 (2005).

12. See generally Johnson, *supra* note 6.

13. See Chad D. Emerson, *A Troubled House of Cards: Examining the Housing and Economic Recovery Act of 2008 Fails to Resolve the Foreclosure Crisis*, 61 OKLA. L. REV. 561, 566 (2008); see also Dickerson, *supra* note 11; Heyward, *supra* note 11; McCoy, *supra* note 11.

14. Johnson, *supra* note 6. See also Brian Gilmore et al., *The Nightmare on Main Street for African-Americans: A Call for the New National Policy Focus on Homeownership*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 262 (2008).

15. Therese G. Franzén & Leslie M. Howell, *Predatory Lending Legislation in 2004*, 60 BUS. LAW. 677 (2005).

living title holder to take responsibility for the property due to a lack of an effective estate plan, or in cases of natural disasters, where the owner must have clear title in order to receive government disaster assistance. In particular, problems arise as vesting title in the owner or occupier's name is often tedious, time-consuming, and cost-prohibitive.

In relation to these identified issues, at a minimum, it is readily apparent that the housing field is ripe for the expansion of multi-disciplinary partnerships between non-profit social service organizations and law schools.<sup>16</sup> Indeed, through the EPP, law students at the CED Clinic have been integral in researching and compiling information pertaining to the legal needs of other non-profit social service organizations. This interface is critical to a process of identifying legal service gaps, incipient or invasive.

### C. Transactional Legal Clinics

The CED works in concert with the staff of Neighborhood Housing Services (NHS) to attend to the legal needs of homeowners and potential homeowners in the region. The CED Clinic's participation in the EPP is focused on four legal service areas: (1) legacy preservation, with the goal of providing direct client services to homeowners to secure and preserve ownership interests in real property for owner occupants; (2) foreclosure prevention, with the goal of educating potential homebuyers, reviewing their loan documents, and representing their interests at closing, as well as providing post-purchase direct client services for homeowners facing the prospect of foreclosure; (3) estate planning, with the goal of educating homebuyers about essential personal documents that protect the homeowner in the event of incapacitation or death; and (4) tangled title clearing, with the goal of working with pro bono attorneys to convey title to owner occupants who are not named on the property deed, and thus

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16. See Robin S. Golden & Sameera Fazili, *Raising the Roof: Addressing the Mortgage Foreclosure Crisis Through a Collaboration Between City Government and a Law School Clinic*, 2 ALB. GOV'T L. REV. 29, 70 (2009) ("CED activists have traditionally focused on the needs of the poor, without realizing that once you 'graduate' someone out of 'poverty' they still need support to sustain themselves and not slip below that income line again. 'Poverty' is a static indicator – income below a certain level which, over a lifetime, a person can pass in and out of [sic].").



render local property more marketable.

Since the 2005 formation of the Equity Protection Partnership, the CED Clinic has made significant contributions to the EPP. Indeed, from June 1, 2006 to May 31, 2008, the CED Clinic received seventy-two referrals and handled a total of seventy-nine legal matters. In those seventy-nine matters, the CED Clinic performed five loan reviews, twenty-six legacy preservations, nine mortgage default foreclosure preventions, eleven tax lien foreclosure preventions, four estate plans, and twenty-four tangled title services. Additionally, during this period, the CED Clinic participated directly in twenty-one consultations with housing counselors and prospective clients. Further, the CED Clinic entered into over fifty agreements to provide direct legal services to clients in need. Many of these matters are on-going and the CED has continued to provide professional expertise.

In addition to providing critical legal services, the EPP has enabled law students to take the lead in teaching classes on important issues facing new homeowners and prospective homebuyers. Notably, CED Clinic staff provides classes on anti-predatory lending issues. Moreover, through this partnership, EPP law students are able to provide essential legal services to clients that non-lawyer housing counselors are not able to offer.

To illustrate this fact, consider the following example that was presented to CED Clinic staff and law students. A Neighborhood Housing Services client living in subsidized housing lost her mother. The client's mother owned a home in a predominately disinvested, inner city neighborhood. The mother died without a will, leaving five children as heirs to the property. The children mutually agreed that the client should move into the property, and each of the other four children transferred their interests to the client in order to provide the probate court with a single title holder. Collectively, NHS was able to work with the client on financing necessary repairs for the property. For its part, the CED Clinic staff dealt with the loan officer and the loan committee regarding opening an estate, recording a deed transferring property to the client, filing an inheritance tax return, and ensuring payment of the inheritance tax obligation. Finally, the client, with the assistance of CED clinic staff, made a will in order to ensure that title problems would not reoccur.

Thanks to this collaborative program, today the client and her family are living in the property.

#### D. Funding the Gap

A predominate concern relative to partnerships between non-profit social service organizations and law schools involves program sustainability and funding. Although not presently utilized in the aforementioned EPP, charging affordable rates for these services could be an additional revenue generator for counseling agencies and law schools. Further, such partnerships could – and likely should – result in the creation of essential, marketable resources such as “train-the-trainer” manuals, educational software, and workbooks for homeownership agencies.<sup>17</sup> Lastly, with enough participation from across the country, grants could be awarded to conduct empirical studies on critical issues facing social service organizations.

## II. SURVEY RESULTS FOR LEGAL SERVICES USED WITH NEIGHBORWORKS AMERICA<sup>18</sup>

Government-guaranteed home mortgages, especially when a negligible down payment or no down payment whatever is required, inevitably mean more bad loans than otherwise. They force the general taxpayer to subsidize the bad risks and to defray the losses. They encourage people to “buy” houses that they cannot really afford . . . In brief, in the long run they do not increase overall national production but encourage malinvestment.

— Henry Hazlitt, 1946<sup>19</sup>

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17. A discussion of intellectual property rights and their transfer to create revenue generating curricula for law school clinics merits its own future article. The contemplated homeownership train-the-trainer and trainee legal curricula which could be developed in clinics and licensed to other universities and agencies would be matters of first impression for most universities.

18. All of the information in Part II is derived from the Homeowner Legal Needs Survey, *supra* note 8, and from NeighborWorks America’s website, <http://nw.org/network/home.asp> (last visited Mar. 21, 2010).

19. HENRY HAZLITT, *ECONOMICS IN ONE LESSON*, § 2 (1st ed. 1946).

## A. History of NeighborWorks HomeOwnership Centers

NeighborWorks is a network of local Neighborhood Housing Services. In 1978, Congress chartered the Neighborhood Reinvestment Corporation in order to support and expand the network of Neighborhood Housing Services. In 2005, at the time of the author-conducted Homeowner Legal Needs Survey,<sup>20</sup> 235 organizations were in the NeighborWorks Network.<sup>21</sup>

NeighborWorks began the Campaign for Home Ownership in 1993. HOCs were part of this campaign. HOCs exist within local, parent, non-profit organizations. Individuals who want access to government or otherwise subsidized loans enroll in these centers for classes and credit counseling. Upon qualifying, they are eligible to receive low, or no down payment loans, as well as low interest loans.<sup>22</sup>

Traditionally, all HOCs offer Full-Cycle Lending services. Full-Cycle Lending consists of community-development partnerships, pre-purchase homebuyer counseling, flexible loans, property services, and post-purchase counseling. These services can be offered directly by the HOC or through collaboration. HOCs are generally required to have at least three full-time staff members. Staff must cover the positions of manager, group trainer, individual counselor, loan officer, and administrator. Prospective partners for HOCs include businesses and corporations such as banks, large employers, credit unions, mortgage and insurance companies, realtors, and home-improvement centers. HOCs may also form partnerships with government agencies, non-profit organizations, and faith-based institutions. Lawyers for homeowners, however, have yet to be formally invited to be partners.<sup>23</sup>

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20. Homeowner Legal Needs Survey, *supra* note 8.

21. To date there are 236 member-organizations in the NeighborWorks Network. See NeighborWorks America, NeighborWorks Organizations, <http://www.nw.org/network/nwdata/NeighborWorksOrganizations.asp> (last visited Apr. 20, 2010). However, with the current housing crisis, NeighborWorks America's future is uncertain. Nevertheless, NeighborWorks America's network can still be used as a platform to form partnerships with law schools and housing counseling agencies.

22. See, e.g., Yair Listokin, *Confronting the Barriers to Native American Homeownership on Tribal Lands: The Case of the Navajo Partnership for Housing*, 33 URB. LAW. 433, 456-57 (2001).

23. Homeowner Legal Needs Survey, *supra* note 8.

At the time of the author's Homeowner Legal Needs Survey, seventy-seven organizations in thirty-two states had been designated as NeighborWorks HOCs. Most of these organizations existed for ten to thirty years, but few had been HOCs for more than five years. The average HOC was located in a densely populated urban area and had an annual budget of \$370,000. Of the seventy-one HOCs surveyed, twenty-six were Community Development Financial Institutions.<sup>24</sup>

#### B. HUD and HomeOwnership Centers

The Department of Housing and Urban Development runs four homeownership centers, located in Atlanta, Denver, Philadelphia, and Santa Ana. These centers serve all of the U.S. states and territories. They do not, however, have any formal affiliation with NeighborWorks HOCs. The HUD homeownership centers insure single-family Federal Housing Administration mortgages. They also supervise the selling of HUD homes.<sup>25</sup>

In addition to running its own homeownership centers, HUD designates other organizations as housing counseling agencies. Thirty-one of the seventy-two NeighborWorks HOCs surveyed were HUD housing counseling agencies. Across the United States, thousands of people per state are required to take HUD-certified classes on homeownership to avail themselves to a myriad of government and private foundation loan products every year.<sup>26</sup>

#### C. HomeOwnership Centers and Legal Services

All HOCs are intended to offer foreclosure education and counseling as part of their post-purchase counseling services. Generally, this foreclosure counseling consists of negotiating a deal between lenders and homeowners who have fallen behind on mortgage payments. Some centers also offer emergency loans to help homeowners make mortgage payments.

All but four of the seventy-one HOCs contacted for the survey offered some foreclosure counseling. Each of these programs was run by staff members at the HOC, not by attorneys. At several of

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24. *Id.*

25. *Id.*

26. *See, e.g.,* Christine Daleiden, *The Legal Parameters of the Financial Crisis*, 13-MAR HAW. B.J. 6, 10 (2009).

the HOCs, foreclosure counseling programs were entirely or predominately limited to recent homebuyers who participated in the HOC pre-purchase counseling. Thirty-nine HOCs surveyed felt that their clients would like to have legal services provided for them at the center. Clients at these centers frequently wanted legal assistance with predatory lending and foreclosures, even when centers already offer foreclosure prevention programs.

Some HOCs reported that few clients were interested in foreclosure counseling, or that clients who needed the service were not using it. At others, the amount of interest was overwhelming, becoming a drain on the centers' resources. Unfortunately, this problem sometimes caused a center to limit or discontinue foreclosure services.<sup>27</sup>

#### D. Other Legal Services Offered at Centers

Only four of the seventy-one HOCs offered legal services at the center. The Home Headquarters of Syracuse, New York had a paralegal to handle closings. Neighborhood Housing Services of Cleveland, Ohio, offered document reviews, reverse mortgages, and counseling for predatory lending. The West Elmwood Housing Development Corporation in Providence, Rhode Island handled document review, real estate purchase and sale agreements, title searches, tax services, and legacy instruments. The Central Vermont Community Land Trust of Barre, Vermont had a legal staff that conducted real estate closings.<sup>28</sup>

#### E. Legal Partnerships and Referrals

While legal services are rarely offered on-site, and clearly not a priority for NeighborWorks, forty-nine of the seventy-one HOCs had some partnership or referral arrangement to provide legal services or advice to their clients. Three centers reported working with self-employed attorneys. For centers in Elkins, West Virginia and Lyndonville, Vermont, these attorneys worked only on closings. In Springfield, Massachusetts, the attorneys covered any real estate issue, including wills and trusts.

Three centers reported working with title companies to provide title searches for their clients. The center in Kalamazoo,

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27. Homeowner Legal Needs Survey, *supra* note 8.

28. *Id.*

Michigan paid for its clients' title searches. At five of the centers, attorneys helped teach the Homebuyer Education seminars. Forty-one of the HOCs referred clients to legal services. A majority of these referrals were to local legal aid organizations.

Two centers referred clients to law schools. The center in Toledo, Ohio referred clients to the University of Toledo School of Law and the center in Sacramento, California referred clients to McGeorge School of Law, University of the Pacific. Of the HOCs that did not make referrals, four provided clients with lists of attorneys or legal organizations. Other centers advised clients to obtain an attorney.<sup>29</sup>

#### F. Opinions of Legal Services

Most of the centers surveyed did not believe that the services they rendered amounted to legal services. They did not consider their foreclosure counseling to be a legal service. However, thirty-two HOCs felt that their clients would like to have legal services provided for them at the center. Clients at these centers most frequently wanted legal assistance with landlord-tenant disputes, bankruptcy, predatory lending, closings, and foreclosures. Clients at some centers also inquired about immigration issues, liens, housing discrimination, lease agreements, succession and purchase issues, credit problems, or repercussions of divorce.

On the other hand, twelve centers surveyed felt that their clients would not want legal services provided at the center. The most common reasons for this conclusion were that their clients did not ask about, need, or want legal services. Some centers felt that legal assistance would be a distraction from their other services, or that they could not compete with other legal aid organizations. The remaining HOCs surveyed were unsure how their clients would respond if legal services were provided for them at the center.<sup>30</sup>

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29. *Id.*

30. *Id.*

III. EXTRACTING BEST PRACTICE PRINCIPLES FROM FINDINGS OF THE LEGAL CLINICS TRANSACTIONAL SURVEY<sup>31</sup>

The same year Roy Stuckey published the follow-up treatises, referred to within this article as the Carnegie Report, this author conducted a Transactional Survey for the attendees of the Sixth Annual Faculty Conference and Workshop: "Teaching Transactional and Exempt Organization Law in the Classroom, in the Clinic and in Field Placements."<sup>32</sup> The Transactional Survey was conducted via questionnaire to all the attendees from 2007 to 2008.<sup>33</sup> All of the attendees of this particular conference were members of in-house transactional clinics.<sup>34</sup> Most homeownership legal matters were transactional in nature. A seventy-three percent response rate was received out of twenty-six attendees.<sup>35</sup>

While the Carnegie Report covers best practice suggestions for all of legal education, only a portion relevant to this Article will be discussed here. The best practice principles discussed here are as follows: (1) use of in-house clinical courses to achieve clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve;<sup>36</sup> (2) balance student autonomy with client protection;<sup>37</sup> (3) offer a classroom component that helps accomplish the educational goals of the courses;<sup>38</sup> and (4) respond to the legal service needs of the communities in which they operate.<sup>39</sup>

At the time of the Transactional Survey, many law schools were seriously considering curricula reform to elevate the status of clinical education. Results from the survey reflect, in large part, the status quo of clinical service and education at that time. Specifically, it is notable that only two survey respondents dealt with homeownership issues, and in those cases, this was a small

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31. The author would like to thank Professor Nicole S. Dandridge, Director, Small Business & Nonprofit Clinic at Michigan State University College of Law for her assistance in preparing this Survey.

32. Transactional Survey, *supra* note 9.

33. *Id.*

34. *Id.*

35. *Id.*

36. CARNEGIE REPORT, *supra* note 2, at 189.

37. *Id.* at 195.

38. *Id.* at 196.

39. *Id.* at 197.

portion of their service-mix.<sup>40</sup> What follows are highlights of survey prompts (responses are available within the related footnotes) with incumbent interpretation and considerations for homeownership legal clinics.

**A. Use In-House Clinical Courses to Achieve Clearly Articulated Educational Goals More Effectively and Efficiently than other Methods of Instruction Could Achieve**

The Carnegie Report acknowledges that “[i]t is impossible to describe fully what a student might learn by participating as a lawyer in the representation of real clients.”<sup>41</sup> However, clinical professors who enable students to process legal work efficiently have more time to teach the reflective and professional lessons that can only come from supervised practice.<sup>42</sup> To that end, the Transactional Survey asked:

“What substantive law do you teach in classroom?”

“What materials do you use? Text? Course pack?”

“Do you use a Student Manual?”

“Where do your students get the sample forms they need to draft documents:

Official government forms on-line \_\_\_\_

Westlaw \_\_\_\_, Lexis \_\_\_\_, FindLaw \_\_\_\_, Other on-line sources \_\_\_\_

Clinic electronic forms \_\_\_\_ Clinic hard copy forms \_\_\_\_

Law School library \_\_\_\_ Other? (describe)  
\_\_\_\_\_”

Survey results to the above prompts demonstrated that only two transactional clinics were involved in the teaching of real

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40. Transactional Survey, *supra* note 9.

41. CARNEGIE REPORT, *supra* note 2, at 189.

42. *Id.*



estate transactions.<sup>43</sup> As a beginning, a homeownership-focused clinic could teach the substantive law of real estate closings, including financial document review, real estate purchase and sell agreements, title searches, and foreclosure prevention rights under certain federal programs and state law.

Many of the homeowners counseled by the CED at the University of Pittsburgh inherited the family home, and all of its problems. In the absence of a will, there is usually no clear titleholder. In one instance, the clinic was faced with twenty-seven heirs to a home valued just above \$30,000. This created a huge burden on the government to forgive back-taxes in order to put the property back to productive use. Getting the twenty-six other heirs to quit-claim their interests away was thwarted by their fears of liability. Sometimes there are medical-bill liens on

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43. Transactional Survey, *supra* note 9. Transactional Survey results are as follows:

*Substantive Law:* 8 General Business Formation/Form of Entities/Entity Selection/Joint Ventures; 9 Non-Profit Formation/Tax Exemption; 1 Corporate; 1 Documentation; 1 Business Acquisition; 1 Corporate Finance; 1 Financial Distress; 1 Structuring Investments; 4 Leasing/Commercial Leasing; 2 Real Property Transactions; 1 Zoning; 1 Affordable Housing Law; 2 Contract Drafting; 1 General Contract Law; 1 Specialized Contract Law (i.e., Non-Disclosure/Non-Compete Agreements); 4 IP/Topic specific IP; 2 Patents, Trademarks, Copyrights; 5 Basic Lawyering Skills/Law Office Practice/ Negotiation, Interviewing & Counseling; Ethics for Business Attorneys; 1 Cross-Cultural Competency; 2 Employment Law; 1 Use & Employment taxes; 1 Substantive Discussion & Guest Speaker (Re: major events in an entity's life-cycle); 1 Constitutional status of the "Right to Earn a Living" and the theory behind occupational licensing; 1 Not Defined/As needed; 1 Separate course covering this subject matter (i.e., non-competes, IP, financing, etc.);

*Materials:* 5 Course Pack; 5 Combination of Text, Statutes, Business Pamphlets/Relevant Statutes & Materials/Articles & Forms/Text & Course Pack/Other Readings; 2 Weekly/Guest Lecturer Handouts; 2 ABA's Emerging Companies Guide, Legal Guide to Microenterprise Development/Practice Guides; 1 Documents from Secretary of State; 1 Text for separate course (the separate course covers the substantive issues);

*Student Manual:* 15 Yes; 3 No; 1 In Development;

*Source of Sample Forms:* 7 Westlaw; 6 Lexis; 3 Findlaw; 11 Other online sources (Advising Oregon Business; Official Gov't forms; Supervising Attorneys; VC Experts.com), Clinic online; 14 Forms; 10 Clinic hard-copy forms; 10 School Library.

the property if the previous owner's health was failing before they passed. Presented with these types of problematic occurrences, homeownership clinics could instruct on other various substantive areas of law including Financial Powers of Attorney, Health Care Powers of Attorney, Wills, and Standby Guardianships.

#### B. Balance Student Autonomy with Client Protection

The Carnegie Report cautions clinical professors to "provide students with challenging but manageable learning experiences. . . ."44 To that end, the survey asked:

"Do clients, faculty, or students initiate first contact?"

"Who conducts first interview of client?"

"Who makes decision on whether to take a client?"

"Does faculty participate in subsequent client meetings?"

"Do clients communicate directly with faculty?"

About forty-nine percent of the respondents indicated that students interacted autonomously with clients; however, a vast majority of faculty members remain involved in subsequent meetings.<sup>45</sup> This is consistent with the approach taken by most clinical professors to hold pre- and post-client meetings with students. In this way the faculty stays involved without stealing the show. In the context of homeownership, the issues are complicated, yet the field is dominated by real estate agents who do not necessarily need a college diploma, let alone a law degree. Because most of the challenges students will confront are covered

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44. CARNEGIE REPORT, *supra* note 2, at 195.

45. Transactional Survey, *supra* note 9. Transactional Survey results are as follows:

*First Contact:* 10 Clients of Faculty; 5 Faculty Supervisor; 2 Contextual; 1 Students; 1 Administrative Assistant;

*Initial Interview:* 9 Students; 6 Faculty & Students; 3 Faculty; 1 Administrative Assistant;

*Client Acceptance:* 13 Faculty; 5 Faculty & Students;

*Faculty Involvement in subsequent meetings:* 14 Yes; 4 No (where "Sometimes" = Yes; "Generally No" = No) (Client Contact with Faculty: 9 Yes; 10 No).

by rudiments communicated within *Pennoyer v. Neff*,<sup>46</sup> first-year contracts, and property courses, transactional clinics relating to home ownership issues are relatively simple to implement. Additional legal knowledge can easily be handled in the classroom component.

C. Have a Classroom Component that Helps Accomplish the Educational Goals of the Courses

All the survey respondents offered a classroom component to their respective programs. In addition to substantive law, the Carnegie Report emphasizes that the classroom component can advance the shared learning experiences of students through reflection of their own performance, peer-critique in simulations, sharing perspectives with outside professionals, and “grand rounds” or “case rounds.”<sup>47</sup> The Transactional Survey asked:

“Class room hours/week?”

“Do you discuss live-client matters in class?”

“Do you use simulations in class to prepare students live-client work?”

“Does the class incorporate students or instructors from programs other than law?”

As the survey results on Substantive Law reveal, most transactional clinics are engaged in a multitude of legal problems.<sup>48</sup> This lends itself, in this author’s experience, to convoluted class instruction. Effective delivery of homeownership legal clinics would provide for some degree of debriefing within the classroom. An entire semester, and certainly a year, could be dedicated to this practice. In turn, law students would graduate

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46. 95 U.S. 714 (1877).

47. CARNEGIE REPORT, *supra* note 2, at 196-97.

48. Transactional Survey, *supra* note 9. Transactional Survey results are as follows:

*Class room hours/week:* 2, 1hr; 1, 1.25hrs; 2, 1.5hrs; 11, 2hrs; 1, 2.5hrs; 1, 3hrs;

*Case Rounds - Discussion of Live client matters:* 18 Yes; 1 Rarely;

*Classroom Simulations:* 14 Yes; 5 No;

*Incorporation of Outside Faculty or Students:* 11 Yes; 8 No.

with a marketable skill. Additionally, as the field of homeownership is replete with various professionals including lenders, real estate agents, title companies, contractors, community development corporations, and others, the student would be broadly exposed to the makers of community. Case rounds could reveal common predators of the community as well as identify access to justice practitioners and their support networks, both formal and informal.

#### D. Respond to the Legal Service Needs of the Communities in Which They Operate

The Carnegie Report places access to justice and seeking justice as two of the most important values of the legal profession.<sup>49</sup> Unfortunately, the housing crisis affects nearly every community that has a law school. Responding to the legal service needs of the communities where clinics operate is a great way for law schools to impart the value of justice to students.<sup>50</sup> This pedagogical value is best served by “imparting the obligation for service to indigent clients, inform[ing] about how to engage in such representation, and [providing] knowledge concerning the impact of the legal system on poor people.”<sup>51</sup> To this end, the Transactional Survey asked:

“Types of clients represented

Community Development organizations \_\_\_\_\_ %

Other nonprofit organizations \_\_\_\_\_ %

For-profit businesses \_\_\_\_\_ %

Homeowners \_\_\_\_\_ %

Other (specify) \_\_\_\_\_ %”

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49. CARNEGIE REPORT, *supra* note 2, at 197.

50. *Id.*

51. *Id.* at 145, 197. See also Ass'n of Am. Law Sch., *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 561 (1992).

“Rank client qualities in order of your priorities for client selection. Asterisk any that are absolute requirements:

Low-income \_\_Growth potential \_\_

Public service goals \_\_Stage of legal formation \_\_

Complex structure \_\_Referral \_\_

Student interest \_\_Regulated industry \_\_

Other \_\_\_\_\_”

Survey results reveal an emphasis on helping organizations, rather than individuals.<sup>52</sup> This begs two questions: One, are entities considering indigent persons for the purpose of certified legal intern representation in some states? Two, would these organizations be served by the private bar, but for the existence of clinics? The trends in the Transactional Survey show that low income clients dominate the field of service. However, the housing crisis did not discriminate between poor and middle-class victims. As explained by Judith Wegner:

According to most estimates, about four-fifths of the civil legal needs of low income individuals, and two- to three-fifths of the needs of middle-income individuals remain unmet. . . . Our nation prides itself on a commitment to the rule of law, but prices it out of reach for the vast majority of its citizens.<sup>53</sup>

Arguably, shelter is a much greater need than business ownership. Nevertheless, this basic need escapes many for the

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52. Transactional Survey, *supra* note 9. Transactional Survey results are as follows:

*Client Service [Dominant =>75%]:* 7 For Profit Dominant; 2 Nonprofit Dominant; 1 Community Development Organizations Dominant; 9 Mix

*Client Qualification:* 12 Low Income; 12 Student Interest; 9 Public Service; 9 State of Legal Formation; 8 Referral; 7 Growth Potential; 6 Complex Structure; 3 Other; 1 Regulated Industry.

53. Judith Wegner, *Theory, Practice, and the Course of Study – The Problem of the Elephant* 51 (2003) (unpublished manuscript, on file with Roy Stuckey); *see also* CARNEGIE REPORT, *supra* note 2, at 24.

inability to navigate our system of private real estate ownership. This concept was further expanded by William Rowe in 1917:

Our system is highly legalistic. . . . Hence, the righteous complaint that the liberty and rights of the mass of the people are now crushed and lost beneath the weight of the system. . . . The people at large and their government must take over and organize the work of legal aid societies, not as charity or social service enterprise, but as necessary and long-neglected government function. For those who cannot bear the burden of expense, legal advice and justice must be free.<sup>54</sup>

#### IV. CONCLUSION: A CALL FOR MORE HOMEOWNERSHIP LEGAL CLINICS THROUGH EQUITY PROTECTION PARTNERSHIPS

The CED Clinic at the University of Pittsburgh School of Law is one of the few service-sites providing both business and homeownership assistance, resulting in sustainable financial literacy. By offering both homeowner and business assistance, the CED develops individual assets in a sustainable manner. Sustainability, for CED purposes, is defined as meeting the needs of the present without taking away from the needs of the future.

In positing that transactional law school clinics' recent treatment of homeowners' legal needs approaches something akin to a "neglect of the left," this Article attempts to challenge law clinics to revise how they meet educational and social needs by forming partnerships with local homeownership agencies to fill a persistent legal services gap. If ignorance of the law is no excuse, then public education about the underlying legal complexities of attaining home ownership, one cornerstone of the American Dream, is an absolute necessity.<sup>55</sup>

Experience working with the administration of non-profit

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54. See William V. Rowe, *Legal Clinics and Better Trained Lawyers – A Necessity*, 11 ILL. L. REV. 591, 592 (1917); see also CARNEGIE REPORT, *supra* note 2, at 25.

55. *Barlow v. U.S.*, 32 U.S. 404, 411 (1833) ("It is a common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally; and it results from the extreme difficulty of ascertaining what is, *bonâ fide*, the interpretation of the party; and the extreme danger of allowing such excuses to be . . . to the detriment of the public.").

housing and homeownership-related legal services reveals that significant reevaluation and reorganization is critical. Principally, a number of problems stem from the fact that these non-profit services lack meaningful accountability to homebuyers.<sup>56</sup> Further, these agencies generally face dwindling grant funds, and they are beholden to their agents.<sup>57</sup> Ultimately, these housing counseling agencies lack the ability to adapt to the shifting legalities of housing economics without more assistance.<sup>58</sup>

Partnering with law school transactional legal clinics would enhance the ability of these organizations to serve the best interests of homebuyers and homeowners. Further, law schools have a duty to serve the needs of the community. Ideally situated, law schools can and should step forward to provide the competent help that is so sorely needed. The national infrastructure for homeowner counseling and financing is there, and it is being heavily subsidized by government and public funds – all that is needed is some leadership in the law schools and in the housing counseling agencies.

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56. See John J. Ammann & Peter W. Salsich, Jr., *Nonprofit Housing Providers: Can They Survive the "Devolution Revolution"?*, 16 ST. LOUIS U. PUB. L. REV. 321, 330, 333, 339 (1997).

57. See generally Cynthia R. Rowland, *UPMIFA, Three Years Later: What's a Prudent Director to Do?*, 18-AUG BUS. L. TODAY 41 (2009).

58. See Golden & Fazili, *supra* note 16, at 47.