



## FUNDRAISING SUCCESS STORY — TURNING LEMONS INTO REALLY GREAT LEMONADE!

*Note from the Journal Committee: With this article, we begin a series of Journal articles featuring fundraising success stories that both inspire us and remind us about best practices. The successes can be big or small, as long as they have some replicability and demonstrate good, universal fundraising practices. We welcome suggestions, so please feel free to share your current best story (by e-mail, to [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com))! Next up is Pisgah Legal Services' success increasing gifts from non-attorney individuals!*

### **Atlanta Volunteer Lawyers Foundation (AVLF)**

**Contact:** Marty Ellin, Executive Director

**The Success:** Raising more money than they lost to continue their long term Guardian Ad Litem project while building new relationships.

**Background:** AVLF has run a successful Guardian Ad Litem (GAL) program for two decades. AVLF staff provide private attorneys with extensive training to be



effective GALs, and then find a volunteer GAL for every family appearing in District Court who cannot afford to pay for GAL services. Funding for this project came from Fulton County and IOLTA. Both of these sources were eliminated during the recent

economic crisis.

**What They Did:** As Marty explained, “When the existing GAL grant ended, I called Chief Judge Cynthia Wright of the Fulton County Superior Court to tell her that we would not accept any new referrals to the program from the Court. I assured her we would honor the open cases, but let her know we had no funds to work new cases. In response, she simply said ‘No.’ When I stammered, she explained that the program was far too important to the poor people of the county,

and to her Court, to let it expire, and she promised to get back to me in three days. I think she thought she could simply call the County and have them reverse their decision to discontinue our funding, but when she called back, she had a different idea. She told me that the judges of that bench would fund the program!”

In two weeks, solicited by Judge Wright, all twenty judges of the Fulton Superior Court had made donations and together generated more than \$20,000.

After receiving word of these contributions, Marty contacted the editor of the *Daily Report*, Atlanta’s legal newspaper. The editor printed a story, which caught the attention of two more potential funding sources. Marty received a call from the chair of the Family Law Section of the Atlanta Bar, indicating that they would like to help, and another call from an attorney at Warner Bates McGough McGinnis & Portnoy, a family law firm, who offered to host a party to raise funds for the project. The firm invited everyone who does domestic work in Atlanta. They raised \$8,500 the first year, and \$23,000 the second year. The firm is proud to support this effort and intends for this to be an annual event.

The project is not only securely funded for the next several years, but AVLF now has more resources and thus can assure expert mentoring/supervision throughout the course of the representation.

**From a Donor’s Perspective:** We shared this *Journal* article with Judge Wright, and she commented:

It is often said that the most difficult issue a judge must decide is the issue of custody. The AVLF GAL program provides information which often would be unavailable to the Court. Otherwise, in many low income cases without attorneys, we would be making decisions in an informational void. It is a huge service to the Court and a huge benefit to the child who is subject of a hotly contested custody dispute.

**Lessons Learned:** When asked what he might have done differently, Marty’s response was that he would

have shouted louder about the Court's support. Financial support from judges is worth so much more than the funds it provides other people pay attention and respond when judges demonstrate their support.

### Some Thoughts about Best Practices:

- *Involve key stakeholders:* Always be thinking about how you might engage key leaders in the work of your program. The investment of the Superior Court judges in AVLF goes deep — the Chief Judge or her designee is a member of the Board of Directors. Judge Wright deepened her understanding and commitment to the program by serving on its board, and another judge is currently serving as her designee.
- *Run a high quality, well-respected, visible program:* So obvious, but often overlooked. You must have a high quality program, and people must know about it. This doesn't mean saying so on your website; it means that you and other staff members are out in the community, appearing in court, participating in bar activities, partnering with related non-profit organizations.
- *Understand who benefits from the project:* Often it is not just the clients who benefit from our work. Judge Wright's comment (see above) made it clear that the representation provided by this project was essential to the judges making difficult custody decisions. AVLF has worked hard to assure that it was understood that this project benefited not only the clients represented, but the judges who hear the cases and the volunteer attorneys who have the opportunity to do meaningful pro bono work.
- *Make the donor the hero:* When Marty told the story to the *Daily Reporter*, he didn't focus on the problem, but on the donors as the solution.
- *The value of pro bono:* It is likely that one of the reasons this project is viewed so positively by the court and other members of the legal community is the involvement of well-trained, high quality pro bono attorneys. Every legal aid program should think about ways to involve the private bar in serving its clients.

1 Marty Ellin has served as the Executive Director of the Atlanta Volunteer Lawyers Foundation since 2001. Marty began his legal career with the Atlanta Legal Aid Society working for Steve Gottlieb — Steve still thinks

Marty works for him— and then was in private practice for almost twenty years before beginning his work with AVLF. Marty may be reached at [mellin@avlf.org](mailto:mellin@avlf.org).

**POVERTY IS TAXING**

**POVERTY IS TAXING — An Introduction to the Special Feature**

In this issue, the MIE *Journal* Committee is pleased to present a collection of articles highlighting the fine work that many legal aid and other advocacy organizations are doing in the area of what might best be described as tax fairness advocacy. It is by now well recognized, of course, that various aspects of our federal, state and local tax systems impact quite heavily on the poor. For example, when Villanova University recently announced the launch of its Master of Laws in Taxation and Master of Taxation programs in an online modality, the program’s director was touted as “...a national authority on tax procedures and issues affecting the low income tax-payer community.” His stated credentials include the fact that he has written extensively on “...the intersection of tax and poverty law.” And indeed, a good deal of literature devoted to this subject *has* been generated. See, *e.g.*: “The New Safety Net: How the Tax Code Helped Low-Income Working Families During the Early 2000s” (Washington: Brookings Institution, February 15, 2006); or Gale, William G., J. Mark Iwry, and Peter Orszag, “Making the Tax System Work for Low-Income Savers: The Saver’s Credit,” Tax Policy Issues and Options Brief 13 (Washington: Tax Policy Center, July 7, 2005). (Among many, many others).

All of us probably have a fair degree of familiarity with things like the federal Earned Income Tax Credit (EITC), Low Income Tax Clinics (LITCs), the link between unpaid property taxes and many foreclosures, and the fact that many (though not all) unpaid tax obligations are not dischargeable in bankruptcy. However, as pointed out at pages 17–21 in Professor Fogg’s article (“Tax Issues Facing Clients of Legal Services”), this area of interest is considerably broader. Several discreet practice areas within legal services have important, but not always obvious links with tax law and procedures. These include: Family Practice or Domestic Relations; Consumer Law; Bankruptcy; Elder Law; Disability Benefits; Immigration; Health Care: Affordable Care Act (ACA); Housing; and Employment Law. And there are likely to be many more. [Because it provides such a good historical perspective on the confluence of tax and legal services, readers may wish to enhance their understanding and appreciation of several of the other

articles by first perusing the aforementioned pages of Fogg’s.]

As a closing note, it may be especially important to some readers for us to directly address the fact that several of the contributors are not Legal Services Corporation (LSC)-funded legal aid organizations, and that they have contributed articles specifically addressing their efforts to influence governmental budget and policy issues that impact vulnerable populations. As explained by one of those authors, “... a tax system’s structure determines how much money is available to fund public services and who shoulders the load in paying for our shared investments.” As another puts it, “Our state imposes higher taxes than all but three other states on those living in or near the poverty level. That data made it easy to connect the dots on why we have such extreme levels of poverty...”

The inclusion of those articles has not been prompted to any extent whatever by political partisanship or ideology. Nor should they be taken to constitute approved policies of or directives from the *Journal*. Rather, they merely reflect our recognition of the fact that all truly effective civil legal aid organizations must be cognizant of and must coordinate their efforts with those of other providers, the bar, law schools, and other relevant entities in seeking to ensure that support is provided to advocates and managers, including training, dissemination and exchange of information, and communication and coordination among practitioners in key areas of law and practice. [See, with specific regard to LSC grantees, the third Indicator under Criterion 9, Performance Area Four, Legal Services Corporation Performance Criteria.] Obviously, the extent, if any, to which LSC-grantees may appropriately implement any of the strategies discussed below could be significantly limited by various provisions of the LSC Act and/or Regulations, as well as by pertinent grant conditions, Program Letters, *etc.*

One contributor, who notes a growing national concern and dialogue about income inequality and its impacts upon the legal aid client community and the economy in general, believes that that fact makes the matters addressed in this special feature all the more timely and relevant. We agree, and hope you will as well.

—Pat McIntyre, for the *Journal* Committee



# Saving Homes from Real Property Tax Foreclosure: Direct Services, Systemic Advocacy and the Power of the Press

By Amy Mix, Supervising Attorney<sup>1</sup>  
AARP Legal Counsel for the Elderly

## Introduction

For older homeowners, the home is likely to be their largest asset, and the forfeiture of the home can mean the loss of economic security.<sup>2</sup> Between 1990 and



2004, property tax rates rose at more than twice the rate of inflation.<sup>3</sup> If a senior falls behind on the mortgage, she may still be able to recover the balance of her equity in a foreclosure sale. But in the District of Columbia, as in many jurisdictions, a homeowner falling

behind in property taxes stands to lose not only the title to the property, but also *all accumulated equity*.

AARP Legal Counsel for the Elderly (LCE) has recently devoted significant resources to representing seniors facing real property tax foreclosure. By building our practice in this area, we learned that exorbitant attorney's fees and high interest rates are a severe impediment to seniors keeping their homes. LCE successfully prevented the loss of the homes of numerous clients and formed a coalition including legal services, the private bar, and nonprofit organizations to advocate for improvements in the statutory code. While corrective legislation was introduced in the D.C. Council, the bill's passage was uncertain.

Then the story of the unfairness of seniors losing their homes and a lifetime of equity for a minimal tax bill was trumpeted by the *Washington Post* in a front page feature series. The lead story was a seventy-six year old man who was dumped on the curb, losing his home over a tax bill of \$176.<sup>4</sup> The *Post* reported that "under the watch of local leaders, the program has morphed into a predatory system of debt collection for

well-financed, out-of-town companies that turned \$500 delinquencies into \$5,000 debts — then foreclosed on homes when families couldn't pay."<sup>5</sup> A week after the news story, the Mayor cancelled the 2013 tax sale for most homeowners and the Council passed emergency legislation.

LCE attorneys and clients were quoted extensively in the *Washington Post* series, and numerous members of the Council have turned to LCE to help devise a remedy. While the news story has catapulted the issue to the top of the agenda, the direct services and systemic advocacy of LCE continue to be essential to a lasting solution.

## Direct Services

LCE has been representing seniors facing real property tax foreclosure for over thirty years. With limited resources to devote to the problem, we represented only a handful of cases a year. For 2009 to 2011, LCE secured a fellowship to focus on helping clients facing tax problems, and thereafter LCE developed a staff attorney position. LCE now provides extended representation in approximately fifty real property tax cases per year.<sup>6</sup>

## Court Presence and Referrals

In the District's tax sale scheme, the tax sale purchaser takes title free and clear of all other claims, including the former owner's claim to the equity. In order to redeem after a tax sale purchaser has filed a foreclosure action, a homeowner must pay the tax arrears, with any penalty and interest, and also the purchaser's attorney's fees. Without the assistance of counsel, it is not uncommon for homeowners to end up paying five to ten times the amount of base tax in

attorney's fees, with bills averaging around \$5,000 for what is often a formulaic debt collection case.

LCE now has a regular and predictable presence in court on the day that tax foreclosure suits are heard. As a result, the judges to whom the tax sale docket is assigned have become very familiar with LCE and make regular referrals to our office. When the senior fails to appear in court, LCE has been appointed as "Friend of Court" to try to locate the senior to determine if representation is possible.<sup>7</sup> The feedback we receive from the court is that judges are relieved to use LCE as a resource this way to ensure that litigants' rights are being protected.

Because so many tax sale cases hinge upon correction by, or negotiation with, the D.C. taxing authority, the Office of Tax Revenue (OTR), the court has asked that OTR employees and a District assistant attorney general be present each day that the tax sale cases are heard. Cases are routinely passed after an initial call to allow the parties to speak with District representatives to sort out tax bill issues. The court is usually generous in allowing homeowners sufficient time to complete the redemption process.

### Representing Clients

In some cases, LCE's representation begins after a tax lien has been sold, and the homeowner stands to lose the title and all accumulated equity unless the tax arrears and the purchaser's attorney's fees are paid. These cases often require working with OTR to correct taxing or accounting errors (*e.g.*, a property has been misclassified as vacant or a senior has inexplicably lost a tax credit, either one of which could increase a tax bill exponentially). The presence of OTR employees in court each week is helpful in supporting relationships between LCE attorneys and OTR employees responsible for making corrections to tax bills or negotiating a reduction in penalties. These relationships are critical to efficient and effective representation of our clients.

Even in cases where attorney's fees are reasonably set, our clients need time to find a way to make the payments. We work with clients to explore financing options, including reverse mortgages. Although reverse mortgages are expensive and therefore a last resort, a number of tax foreclosure clients have tax arrears in the tens – or hundreds – of thousands of dollars and homes that are in desperate need of repair. In those cases, reverse mortgages may be a solution to the taxes

and the housing condition. We also find that a number of clients who fall behind in taxes are living in homes that have not been probated for a generation or two. In those cases, probate is often a necessary step for redemption, especially if financing will be required because the client will have to be on the title. Some clients may need referrals to a social service agency or another LCE attorney who specializes in public benefits to help the client apply for financial benefits. Whatever the solution may be for a particular client, it is rarely obvious or easy, so creative thinking is also critical.

### Outreach

Reaching potential clients *before* they are caught in the tax sale has tremendous benefits. LCE as a whole participates in a significant amount of outreach to educate and inform potential clients, and the consumer unit participated in approximately twenty outreach events in 2013. These events are often at senior centers or churches. At each consumer unit outreach event, an attorney provides information about tax foreclosure and the services LCE offers. LCE also distributes our one-page, double-sided real property tax foreclosure flyer, in both English and Spanish. Moreover, consumer unit attorneys have appeared on radio and television programs to speak about the potential risks of a tax sale and how potential clients can use LCE services to avoid foreclosure. We are exploring ways to include law student interns or other volunteers to work with seniors identified through outreach who are not yet receiving homestead or senior credits to lower total tax bills.

### Systemic Advocacy

With the intensive focus on tax foreclosure cases, we identified areas that were in need of systemic reform, such as consistently bad customer service at OTR, the failure for the OTR to provide timely, and accurate notices about past due amounts or upcoming tax sales, exorbitant attorney's fees and interest which made it difficult for clients to redeem post-sale, and the general inequities in a tax sale system which threatened a homeowner with the loss of all accumulated equity in a home (and a windfall to the tax sale purchaser).

### Testimony at Public Hearings

We tried to collaborate with OTR to address issues such as repeat complaints from clients about incorrect information from customer service representatives. But unfortunately, at that time, we did not get much response by OTR. So we turned to testifying at public

hearings. LCE provided oral and written testimony at several D.C. Council OTR oversight hearings, detailing the systemic problems we saw with that office. Testifying helped to identify LCE as leader in the area, making it easier to build a coalition that shared our goals for tax sale reform.

### *Building a Coalition*

In 2010, LCE formed a partnership with Crowell & Moring, LLP, a law firm that had already been involved in staffing a resource center in court where homeowners could get information about the court foreclosure process. Together, we drafted a letter to the D.C. Mayor, Council, and the head of the taxing agency. In an effort to demonstrate wide-reaching support for reforms, LCE and Crowell & Moring formed AT HOME, the Alliance to Help Owners Maintain Equity, and invited area legal services, law firms, and nonprofits to sign on to the letter as coalition members. By involving other organizations, we also had the opportunity to educate those offices about this problem area.

AT HOME drafted legislation to reform substantially the real property taxing and tax sale system, presenting the proposed legislation to the D.C. Council along with another round of written and oral testimony about OTR. The Council introduced the bill in late 2012, and then re-introduced it in January 2013 as Bill 20-23: The Residential Real Property Equity and Transparency Act of 2013. The advocacy of the AT HOME coalition had momentum with the re-introduction of the bill, but it was not clear that the law would pass or that the key reforms would remain strong.

### *Washington Post Story*

On September 7, 2013, while the AT HOME proposal was still pending but no legislative hearing had been scheduled since its introduction nine months earlier, the *Washington Post* published the first of a three-part series on the broken real property tax sale system: “*Homes for the Taking: How a small tax debt can become a big problem in the District.*”<sup>8</sup> LCE worked with the investigative reporters for almost ten months, providing background information, detailed information about the systemic problems facing taxpayers, and connecting the reporters with current and former LCE clients whose stories illustrated these problems. Within a week, emergency legislation put a hold on the onerous tax sale process.

### *On-Going Systemic Advocacy*

The reaction to the series was immense, and LCE

attorneys spent the following three weeks responding to media requests, briefing stakeholders, and formulating an AT HOME response to the swift actions being taken by the Council and the Mayor. We continued to build the AT HOME membership, and at a hearing on Bill 20-23 after the *Washington Post* stories ran, the testimony from AT HOME was signed by almost twenty other legal services offices, non-profits, and law firms. We continued to advocate for the reforms identified in the bill and not yet addressed by the emergency legislation. AT HOME also advocated for reforms that would allow foreclosed homeowners to retain most of the equity post-tax sale. With the *Washington Post*'s spotlight on the District's tax sale system, Bill 20-23 gained broader support from policymakers.

The media attention also resulted in new opportunities for LCE attorneys to work directly with OTR to identify reform areas and to make recommendations for fixes. LCE attorneys, on behalf of AT HOME and at the invitation of the D.C. Council, have continued to participate in regular meetings with OTR to revise Bill 20-23 before it is presented to the full Council for a vote. We anticipate that the final legislation will include a reduced interest rate, a cap on reimbursable attorneys fees, better pre- and post-sale notices, a minimum threshold under which taxes will not be sold, a mechanism for returning a portion of equity to the former owner, and the creation of an ombudsman to assist homeowners, among other new protections. With strong support from policymakers and other District representatives, we are optimistic that the new tax sale scheme in the District will serve as a model for other jurisdictions. We hope that the success our office has had in this systemic advocacy effort will also serve as a model for other legal services offices nationally.

1 Amy Mix is the supervising attorney for the Consumer Fraud and Financial Abuse Unit at Legal Counsel for the Elderly (LCE). With the twin goals of protecting clients' homes and their sources of income, LCE's consumer unit represents homeowners facing mortgage and tax foreclosure and victims of equity-stripping schemes and other real property fraud, as well as litigating financial exploitation cases and defending debt collection lawsuits. In September 2013, LCE's work on protecting homeowners facing tax foreclosure was highlighted in a *Washington Post* series on tax sales in the District. Amy may be reached at [amix@aarfp.org](mailto:amix@aarfp.org).

The author would like to give thanks and credit to former LCE staff attorney Laura Newland for identifying

*Continued on page 50*

☉ SAVING HOMES FROM REAL PROPERTY TAX FORECLOSURE  
Continued from page 39

the tax sale issues described in this article and for working tirelessly to save the homes of dozens of LCE clients through her work on the real property tax foreclosure project.

- 2 Andrew Kochera, AARP Public Policy Institute, "State Housing Profiles," at 2 (2006), available at [http://assets.aarp.org/rgcenter/il/d18637\\_housing.pdf](http://assets.aarp.org/rgcenter/il/d18637_housing.pdf).
- 3 *Id.* at 7.
- 4 The story ran for three days on the front page with additional stories in the body of the paper. See <http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/?hpid=z1>.
- 5 *Id.* at X.
- 6 This includes foreclosure litigation and appeals of the denial or loss of real property tax relief, such as homestead or senior tax credits.
- 7 If LCE determines that the senior homeowner is incapacitated, we may recommend appointment of a guardian *ad litem*.
- 8 See <http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/?hpid=z1>.

### Board of Directors

Jacquelynn Bowman, Chair  
*Greater Boston Legal Services*

Catherine Carr, Vice Chair  
*Community Legal Services*

Michele Storms, Secretary  
*William H. Gates Public Services Law  
Scholarship Program*

Eric Mittelstadt, Treasurer  
*Utah Legal Services*

Mary Asbury  
*Legal Aid Society of Greater Cincinnati*

Lorray Brown  
*Michigan Poverty Law Program*

Steve Gottlieb  
*Atlanta Legal Aid Society*

Charles Hey-Maestre  
*Puerto Rico Legal Services*

Jan May  
*AARP/Legal Counsel for the Elderly*

Linda Rexer  
*Michigan State Bar Foundation*

Toby Rothschild  
*Legal Aid Foundation of Los Angeles*

John Tobin  
*New Hampshire Legal Assistance*

Betty Balli Torres  
*Texas Access to Justice Foundation*

César Torres  
*Northwest Justice Project*

Adrienne Worthy  
*Legal Aid of West Virginia*

### Journal Committee

Jan May, Co-chair  
*AARP/Legal Counsel for the Elderly*

John Tobin, Co-chair  
*New Hampshire Legal Assistance*

Catherine Carr  
*Community Legal Services*

M. Victor Geminiani  
*Hawai'i Appleseed Center for Law and  
Economic Justice*

Kimberly P. Jordan  
*The Ohio State University Moritz College  
of Law*

Joann Lee  
*Legal Aid Foundation of Los Angeles*

Patrick McIntyre  
*Washington State Alliance for  
Equal Justice*

Dave Pantos  
*Legal Aid of Nebraska*

Elizabeth Wehner  
*Legal Aid of West Virginia*

David Yoder  
*Legal Aid of East Tennessee*

Patricia Pap  
*Management Information Exchange*

