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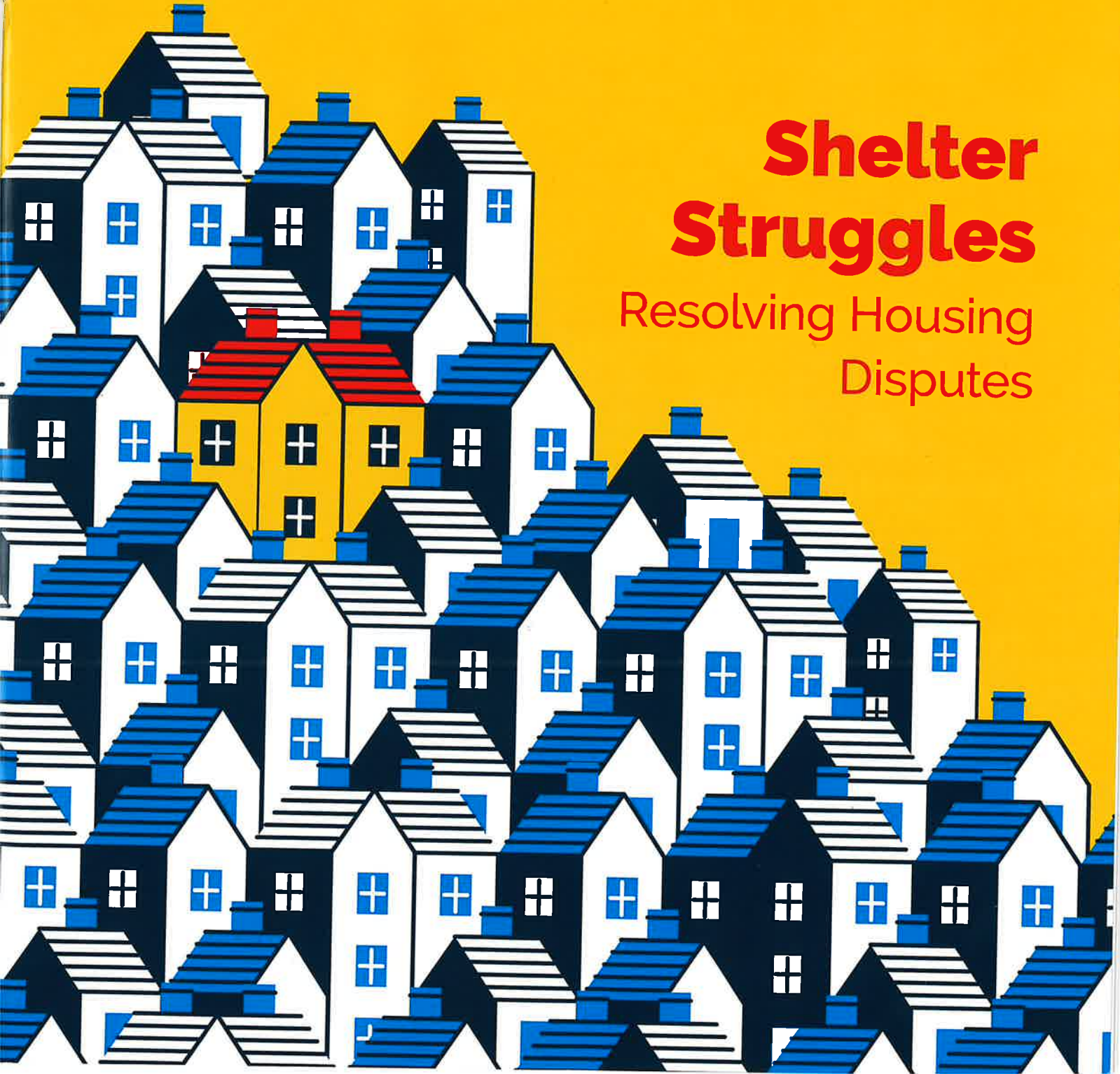
POST-PANDEMIC  
EVICION  
MEDIATION

LESSONS LEARNED  
FROM FORECLOSURE  
MEDIATION

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# DISPUTE RESOLUTION MAGAZINE

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## Shelter Struggles

Resolving Housing  
Disputes

# Lessons Learned from Housing Crises of the Past

An Interview with  
Hon. Douglas C. Mintz (Ret.)

*Douglas Mintz was appointed to the Superior Court in 1993 and served as the Civil Presiding Judge for both the Judicial District of Stamford/Norwalk and the Judicial District of Danbury. Prior to his service on the bench, he was a State Representative from Norwalk (1987-1992) and served as the Vice-chair of the Judiciary Committee for most of that time. Doug is a member of the National Academy of Distinguished Neutrals and is a Panelist, as an Arbitrator and a Mediator, for the American Arbitration Association. Since 2020, Doug has been a partner at Carmody Torrance Sandak & Hennessey LLP in Stamford, CT.*



*This interview was edited and consolidated for print.*

**A**lternative Dispute Resolution Magazine Editorial Board member Heather Scheiwe Kulp interviewed the Hon. Douglas C. Mintz (Ret.) of Connecticut regarding the Connecticut Foreclosure Mediation Program and his role in its creation.

## **You were a key designer of the Connecticut Foreclosure Mediation Program. How did the program begin?**

December 2007: I received a phone call from the Senate Co-Chair of the Legislature's Judiciary Committee, Senator Andrew McDonald. He asked if the Legislature could do anything to help homeowners facing the loss of their homes, in light of the looming mortgage foreclosure crisis.<sup>1</sup> That morning, I had read an article about Cleveland's newly-implemented Foreclosure Mediation Program, so I responded that perhaps the Legislature could create a Foreclosure Mediation Program, to be administered by the Judicial Branch. Senator McDonald liked the idea. I immediately called Chief Justice Chase Rogers, the Chief Justice of the Connecticut Supreme Court, to inform her of my conversation. Chief Justice Rogers gave me the go-ahead to

collaborate with the Legislature, as long as the program would not need to be funded out of the Judicial Branch's existing appropriation.

## **That collaborative multi-branch effort seems complicated. What was the process for that collaboration?**

The Banks Committee, with Co-Chairs Senator Bob Duff and Representative Ryan Barry, convened stakeholders who would be interested in a Foreclosure Mediation Program, including representatives from the banking industry and consumer advocates. I was invited as a representative of the Judicial Branch. It was critical to have the banks at the table. Without their buy-in, this program would have been used grudgingly, ineffectively. Instead, they offered ideas about how to streamline communication and ensure participation. They also paid for it with a \$2 million appropriation from the State Banking Fund.

The end result, Sections 15 – 20 of Substitute House Bill No. 5577, was drafted and passed by the Banks Committee on March 4, 2008. It passed both Houses of the Legislature and was signed into law by Governor Jodi Rell as Public Act 08-176.



## **We know from dispute systems design that the design of the program, as much as the existence of the program, dictates its success. How was the program designed?**

We had until July 1, 2008, to establish foreclosure mediation programs in each judicial district in the state. The first step was to appoint the first manager of the program, Roberta Palmer. Every program of this magnitude needs a leader who can be both a champion and an implementer—digging into details that really make the program run. It was key that Roberta herself knew mediation. She knew we needed neutrals who knew the substance *and* the process. Because of Roberta's vision and expertise in mediation, she was dedicated to hiring and training full-time judicial branch employee mediators for the program. This allowed greater oversight over the mediation practice. As a result of the deliberate process involved in the program's creation, stakeholders found the mediators credible; both sides took comfort in and trusted their neutrality. It also enabled the program designer to make immediate and impactful changes to process, consistent with the legislation.<sup>2</sup>

## **How effective was the program?**

From July 1, 2008, through November 30, 2023, 33,702 cases have completed the Foreclosure Mediation Program with a settlement rate of 87%. 24,036 of the cases resulted in the Homeowner staying in their home through a Loan Modification (20,325), Reinstatement (2,356) or a Forbearance/Repayment Plan/Payoff (1,355).

## **So it's still going! To what do you attribute its long-term success?**

This rate of alternative to foreclosure is due to a few factors.

First, as I said previously, full-time, well-trained judicial employee mediators are involved so both sides trusted the neutrals and the process. The mediators sometimes knew the alternatives to foreclosure better than the bank employees. They could start to see resolutions sooner than others, and could help people talk about them in detail.

Second, when we created this, it was really important that all stakeholders were in the room. They participated in the conversation and agreed to the design because they were part of the process, even if they were not enthusiastic about the existence of such a program. This buy-in from the beginning also allowed us to iterate in the first few years and subsequently every few years.

The regular iteration has resulted in a third factor that has really made this effective: pre-mediation preparation session. This allows the mediator to make sure all the information needed for the mediation is complete, gathered, and organized. Sometimes this happens *ex parte*, so the trust I mentioned above is key to getting approval from the banks for this.

## **Would you implement this kind of program again in a crisis, and what would you do differently if you would?**

This program has exceeded our wildest expectations. We've had to extend it multiple times because we put a sunset on it and didn't realize it would be so well received beyond the immediate crisis. If I were to do it again, I would see it as a program that could be beneficial as a regular feature of judicial branch dispute resolution offerings, rather than a crisis-driven temporary bandaid. Even without a crisis, there is a place for a program where people can talk about alternatives to an incredibly challenging situation for both sides. Because of these benefits, three mediation sessions may not be enough.

## **What other applications do you see a program like this having?**

Obviously, we see replicas of this managing the post-pandemic flood of evictions. In addition, developer and local government interests in land use and zoning may be an interesting, untapped area for dispute resolution programs like this.

## What advice do you have for someone who might be interested in starting a program like this?

Use your mediation skills in crafting the program, whether it's by legislation or court rule or internal policy. As a legislator, I learned to craft something that addresses interests of both sides and is effective. Whatever entity you are working within, find the people who are solving problems. Bring the right people to the table and get them talking. Crises brings people together, but ongoing collaboration keeps them engaged in resolving chronic challenges in creative ways. ■

### Endnotes

1 December 2007 was the official beginning of the recession, according to the National Bureau of Economic Research, which declares recessions and depressions in the United States. Lehman Brothers would not collapse for another nine months. This timing meant the Connecticut program was one of the earliest programs created in the wake of increasing defaults on mortgages.

2 The legislation states, in part, "The program is available to owner-occupants of one-to-four family residential real property in Connecticut who are also the borrowers under a mortgage encumbering the property and who use the property as their primary residence." The legislation included specific requirements for the mediators including that they be trained and employed by the judicial branch. Mediators also needed to have knowledge of community-based resources and mortgage assistance programs.

Until July 1, 2010, under the act, the lender is required to give notice of the foreclosure mediation program to the borrower by attaching to the front of the foreclosure complaint, in a chief court administrator-approved form (1) a notice of the availability of the foreclosure mediation program and (2) a foreclosure mediation request form.

Borrowers can request mediation by submitting the form to the court and filing an appearance within 15 days of the return date. The court must notify all appearing parties in the action of the request for mediation. The borrower's submission of a request does not waive either the borrower's or lender's rights in the foreclosure action.

Certain requirements are also placed on the borrower and lender to promote efficient settlements. The first mediation session must be held within 10 business days of the court sending the notice. The borrower and lender must appear in person at each session and can agree to a proposed settlement. The lender's attorney can appear instead if he or she has the authority to agree to a proposed settlement and if the lender is available by telephone or electronically.

Within two days of the end of the first mediation session, the mediator must determine if further mediation is useful in a report that must be filed with the court and mailed to the parties. The mediation terminates automatically if the mediator does not think it will be beneficial to continue. If mediation continues, the mediator must file a second report within two days after mediation ends, but no later than 60 days after the return date in the foreclosure action. This mediator's report automatically terminates the mediation period. The mediator can refer certain unresolved issues to community based services. A court cannot enter a judgment of strict foreclosure or foreclosure by sale if a borrower has submitted a timely request for mediation and the mediation period has not expired.

The program required the chief court administrator to establish policies and procedures and included minimum requirements, including regarding the borrower's ongoing obligations and inapplicability of the mediation determination to an appeal of a foreclosure judgment.



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