



**PHILADELPHIA RESIDENTIAL
MORTGAGE FORECLOSURE
DIVERSION PROGRAM**

Mortgage Foreclosure Negotiation Training
Manual for Pro Bono Counsel

Friday, April 29, 2016
12:00 – 2:15 PM

With many thanks to our host

Fox Rothschild LLP

Trainers

TONY ABATA

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Philadelphia VIP

OVERVIEW

Philadelphia VIP is the hub of pro bono legal services in Philadelphia. Our mission is to provide equal access to justice to low income Philadelphians by harnessing the already existing capacity within the private bar. Philadelphia VIP handles cases from adoption to zoning and is a leader in recruiting and training private attorneys for pro bono work.

As a volunteer attorney with VIP, you will have access to staff members for technical assistance. We also have a mentor program where volunteers may request the assistance of an expert senior level attorney. Mentors are assigned to a case and usually provide guidance for the duration of the volunteer's representation. In addition, VIP has a host of other volunteers including translators and court reporters that are available to our attorneys. VIP also offers free CLE trainings in many substantive areas and we are happy to partner with our volunteers to offer these trainings through firms and corporations.

We have been involved in the Residential Mortgage Foreclosure Diversion Program since its inception in 2008. Members of VIP's staff sit on the Mortgage Foreclosure Steering Committee, which was responsible for the development of the program at the height of the housing crisis. VIP is committed to serving low-income homeowners throughout the diversion process by training and supporting volunteer attorneys, paralegals, and other professionals.

WAYS TO VOLUNTEER WITH VIP'S FORECLOSURE NEGOTIATION PROGRAM

Ongoing Volunteer: The VIP volunteer attorney handles the client's case until the matter is out of Diversion. VIP will send a case file to the volunteer in advance of the next conciliation conference.

Day-of Volunteer: The VIP volunteer attorney handles the client's case only for a single conciliation conference. If the case remains in Diversion beyond that conference, VIP then finds an ongoing volunteer for the client's case. VIP generally seeks Day-of Volunteers only if an Ongoing Volunteer has not been secured within a week of the upcoming conciliation conference.

On-call/Emergency Volunteer: The VIP volunteer attorney agrees to be available for a specific morning or afternoon conciliation session, in case a client needs emergency legal assistance. The volunteer agrees to be in close proximity to City Hall (e.g., at a Center City office) and to report to City Hall should an emergency arise. If the case remains in Diversion beyond that conference, VIP then finds an ongoing volunteer for the client's case.

LOGISTICS FOR ALL VIP VOLUNTEER ATTORNEYS

- Volunteers receive 2 free CLE credits for (1) representing one client as an Ongoing Volunteer, *or* (2) serving as a Day-of or On-call/Emergency volunteer on three separate occasions.
- Ongoing representation is highly preferred – It results in a much higher likelihood that the client will save her home. It also allows VIP staff to find only one volunteer attorney for every case.
- Per Rule 6.5 of the PA Rules of Professional Responsibility, a volunteer need not obtain conflict waivers when acting as a day-of or on-call/emergency volunteer. However, to continue representation after providing day-of or on-call/emergency representation, a volunteer must conduct a conflicts check.

Substance of a Foreclosure Case

RELEVANT STATUTES

A sample Notice of Intent to Foreclose.
Usually combined with the Act 91 notice.

Date: _____

**ACT 91 NOTICE
TAKE ACTION TO SAVE
YOUR HOME FROM
FORECLOSURE***

This is an official notice that the mortgage on your home is in default, and the lender intends to foreclose. Specific information about the nature of the default is provided in the attached pages.

The HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE PROGRAM (HEMAP) may be able to help to save your home. This Notice explains how the program works. To see if HEMAP can help, you must MEET WITH A CONSUMER CREDIT COUNSELING AGENCY WITHIN 33 DAYS OF THE DATE OF THIS NOTICE. Take this Notice with you when you meet with the Counseling Agency.

The name, address and phone number of Consumer Credit Counseling Agencies serving your County are listed at the end of this Notice. If you have any questions, you may call the Pennsylvania Housing Finance Agency toll free at 1-800-342-2397. (Persons with impaired hearing can call (717) 780-1869).

This Notice contains important legal information. If you have any questions, representatives at the Consumer Credit Counseling Agency may be able to help explain it. You may also want to contact an attorney in your area. The local bar association may be able to help you find a lawyer.

LA NOTIFICACION EN ADJUNTO ES DE SUMA IMPORTANCIA, PUES AFECTA SU DERECHO A CONTINUAR VIVIENDO EN SU CASA. SI NO COMPRENDE EL CONTENIDO DE ESTA NOTIFICACION OBTENGA UNA TRADUCCION INMEDIATAMENTE LLAMANDO ESTA AGENCIA (PENNSYLVANIA HOUSING FINANCE AGENCY) SIN CARGOS AL NUMERO MENCIONADO ARRIBA, PUEDE SER ELIGIBLE PARA UN PRESTAMO POR EL PROGRAMA LLAMADO "HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE PROGRAM" EL CUAL PUEDE SALVAR SU CASA DE LA PERDIDA DEL DERECHO A REDIMIR SU HIPOTECA.

A sample Act 91 Notice

Civil Procedure

An action of mortgage foreclosure is governed by Pennsylvania Rules of Civil Procedure 1141-1150 and 1019, 1024, and 1028.

NOTICE OF INTENTION TO FORECLOSE MORTGAGE

The MORTGAGE held by _____
(hereinafter we, us or ours) on your property located at _____
IS IN SERIOUS DEFAULT [because you have not made the monthly payments of _____ for the months of _____, and _____, and/or because _____].

Late charges and other charges have also accrued to this date in the amount of _____. The total amount now required to cure this default, or in other words, get caught up in your payments, as of the date of this letter, is _____.

You may cure this default within THIRTY (30) DAYS of the date of this letter, by paying to us the above amount of _____, plus any additional monthly payments and late charge which may fall due during this period. Such payment must be made either by cash, cashier's check, certified check or money order, and made at _____.

If you do not cure the default within THIRTY (30) DAYS, we intend to exercise our right to accelerate the mortgage payments. This means that whatever is owing on the original amount borrowed will be considered due immediately and you may lose the chance to pay off the original mortgage in monthly installments. If full payment of the amount of default is not made within THIRTY (30) DAYS, we also intend to instruct our attorneys to start a lawsuit to foreclose your mortgaged property. If the mortgage is foreclosed your mortgaged property will be sold by the Sheriff to pay off the mortgage debt. If we refer your case to our attorneys, but you cure the default before they begin legal proceedings against you, you will still have to pay the reasonable attorney's fees, actually incurred, up to \$50.00. However, if legal proceedings are started against you, you will have to pay the reasonable attorney's fees even if they are over \$50.00. Any attorney's fees will be added to whatever you owe us, which may also include our reasonable costs. If you cure the default within the thirty day period, you will not be required to pay attorney's fees.

We may also sue you personally for the unpaid principal balance and all other sums due under the mortgage.

If you have not cured the default within the thirty day period and foreclosure proceedings have begun, you still have the right to cure the default and prevent the sale at any time up to one hour before the Sheriff's foreclosure sale. You may do so by paying the total amount of the unpaid monthly payments plus any late or other charges then due, as well as the reasonable attorney's fees and costs connected with the foreclosure sale [and perform any other requirements under the mortgage]. It is estimated that the earliest date that such a Sheriff's sale could be held would be approximately _____. A notice of the date of the Sheriff sale will be sent to you before the sale. Of course, the amount needed to cure the default will increase the longer you wait. You may find out at any time exactly what the required payment will be by calling us at the following number _____. This payment must be in cash, cashier's check, certified check or money order and made payable to us at the address stated above.

Act 91

Act 91 of 1983 created HEMAP, the Homeowner's Emergency Mortgage Assistance Program. Under Act 91, a mandatory "Act 91 Notice" must provide HEMAP information to the homeowner prior to the institution of foreclosure proceedings.

Act 6

Act 6 governs mortgage foreclosure procedure in Pennsylvania. An "Act 6 Notice" is a Notice of Intent to Foreclose.

THE FORECLOSURE PROCESS IN PENNSYLVANIA

- Foreclosure in Pennsylvania is a judicial process – the lender must commence an action in court in order to foreclose on and sell the property.
- The homeowner receives an Act 91 / Act 6 notice before the complaint is filed, a 10-day notice of intention to take a default judgment before judgment is entered, and a notice that a sheriff’s sale will occur before the sale.

BASIC VOCABULARY

Originator (aka “mortgage issuer” or “initial lender”): The financial institution – usually a bank, thrift company, or mortgage banker – that is the original mortgage lender. An originator may sell the loan, which often ends up in a pool of mortgages backing a security purchased by investors.

Servicer: The company that collects monthly payments from the borrower and passes them to the lender or the investors in the mortgage pool.

Trustee: The institution that manages the mortgages held in mortgage-backed securities for the investors.

“Loan Insurers” or “Guarantors”: Institutions that guarantee the loan against default. A loan insurer may also hold the loan or the mortgage-backed security. These institutions include:

- Fannie Mae – Federal National Mortgage Association
- Freddie Mac – Federal Home Loan Mortgage Corporation
- FHA – Federal Housing Administration
- VA – Veteran’s Administration

Loan-to-value (LTV) ratio: expresses the amount of a first mortgage lien as a percentage of the total appraised value of real property. For instance, if a borrower wants \$130,000 to purchase a house worth \$150,000, the LTV ratio is $\frac{\$130,000}{\$150,000}$ or 87%.(LTV)

PITI: principal, interest, taxes and homeowner’s insurance

LOAN TYPES

FHA Loans: These federally insured loans are made by the Federal Housing Administration and require the homeowner to purchase mortgage insurance.

Conventional Prime Loans: These loans are given to homeowners with good credit and a lower Loan-To-Value ratio. Conventional prime loans may be fixed, meaning the interest rate does not change during the entire term of the loan, or adjustable, meaning that the interest rate changes periodically according to corresponding fluctuations in an index.

Conventional Subprime Loans: These loans are given to homeowners with poorer credit and a higher Loan-to-Value ratio. While some of these loans are fixed, of late they are almost always adjustable.

Predatory Loans: Any mortgage loan that contains excessive costs and / or fees at closing, and where the borrower's ability to pay the debt is questionable. These loans are often solicited by the lender using bait and switch tactics and are settled in the homeowner's house. Required disclosures usually are not provided. *Please alert VIP staff if you suspect a loan is predatory!*

The Diversion Program Process

INTRODUCTION

Joint General Court Reg. No. 2008-1

Joint General Court Reg. No. 2008-1 established the Residential Mortgage Foreclosure Diversion Pilot Program in June 2008. The program was reauthorized by court order on December 16, 2009, and is now a lasting fixture of the Philadelphia foreclosure process.

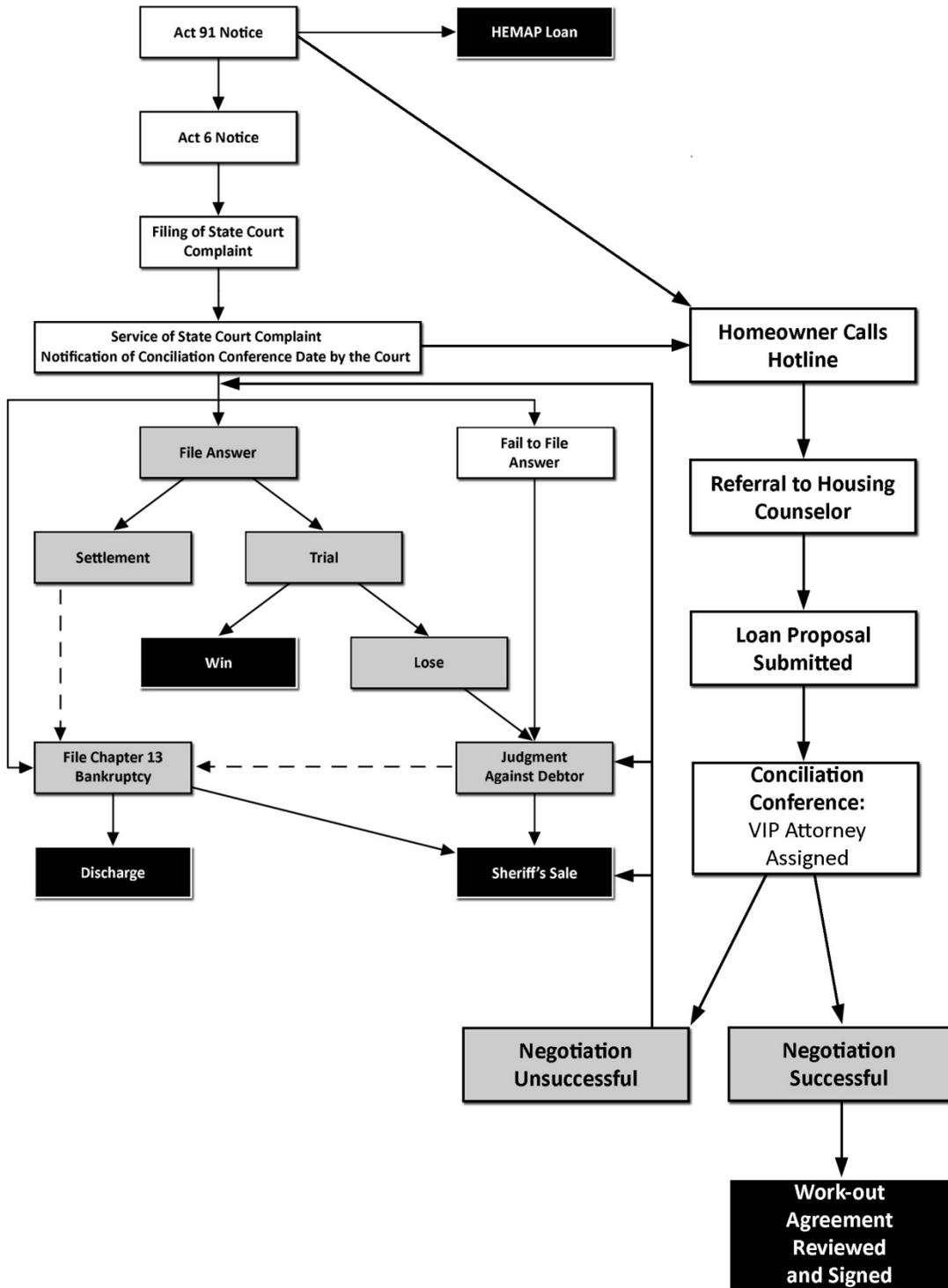
Program Description

The Philadelphia Residential Mortgage Diversion Program provides an opportunity for homeowners and lenders to avoid a foreclosure by negotiating an agreement that either allows the homeowner to keep the property or enables the homeowner to achieve a “graceful exit.”

Created by the Honorable Annette M. Rizzo and a local task force comprised of representatives from many stakeholder agencies, the diversion program covers all mortgage foreclosure cases involving owner occupied residential properties in Philadelphia. These properties cannot proceed to judgment or to sale unless a conciliation conference is held under court supervision.

PRACTICE POINT:	Conferences convene every Thursday in City Hall Courtroom 676 at 9 a.m. and 1 p.m. 60 to 125 cases are heard per session.
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Philadelphia's Foreclosure Process with the Diversion Program



Gray boxes indicate steps requiring a lawyer's intervention.

HOW THE DIVERSION PROCESS (IDEALLY) WORKS

Notifying Homeowners

- STEP 1: The plaintiff files a complaint.
- STEP 2: The complaint is served on the homeowner. Service includes a letter from the Court of Common Pleas listing a conciliation conference date and the phone number for the Save Your Home Philly hotline (215-334-HOME).
- STEP 3: The homeowner calls the hotline and receives a referral to a housing counseling agency.
- alternatively* The homeowner calls a housing counseling agency as a result of outreach by the Office of Housing and Community Development or referral by a lender.
- STEP 4: The housing counselor submits a loan work-out proposal to the plaintiff's counsel at least 10 days before the conciliation conference.
- STEP 5: If a financial proposal was submitted prior to the conference, the lender's attorney, the housing counselor, and the homeowner will discuss foreclosure alternatives at the conciliation conference.
- alternatively* If a financial proposal was not submitted in time or at all but the homeowner appears at the conciliation conference, the court will automatically schedule a second conciliation conference approximately 35 days hence. The financial proposal must be submitted no later than 14 days prior to the second conciliation conference so that foreclosure alternatives can be discussed at the second conference.

Housing Counseling

The City Office of Housing and Community Development (OHCD) has invested approximately \$4 million a year in more than two decades of free housing counseling. Approximately 30 housing counseling agencies in Philadelphia have contracts with OHCD. These agencies typically include between one and six counselors.

In most agencies, the counselor who prepares the homeowner's loan work-out application also will be present at the conciliation conference, although a few agencies do not send the housing counselor who worked up the homeowner's application. Counselors who did not prepare the application might not be as familiar with the homeowner's case but should have materials on file.

Conciliation Conferences

- Conferences take place on Thursday in City Hall, Courtroom 676.
- Conferences begin at 9 a.m. and 1 p.m.
- Homeowners check in at sign-in table and then at the housing counselor table. If they do not have a housing counselor, they are assigned to one at check-in.
- If the homeowner and the housing counselor determine that there is a need for a volunteer attorney, the client comes to VIP's intake table. Volunteer paralegals conduct client intake.
 - Generally, VIP staff reviews the intake sheet after the conference and determines whether the client is eligible for legal assistance from a volunteer attorney.
 - In limited circumstances when the client is need of emergency legal assistance, VIP staff asks the On-Call Volunteer Attorney to assist the client for that conference only.

VIP Eligibility Requirements

- The homeowner must be at or below 200 percent of the federal poverty level for the size of her or his household.
- The homeowner cannot own more than one residential property (i.e., the property at issue in the foreclosure).
- The homeowner must either be living in the home or want to live in the home. The homeowner need not be on the deed to the property. (VIP may be able to find a separate volunteer attorney to help sort out any title issues.)

VOLUNTEER ATTORNEY RESPONSIBILITIES

Client Communications

It is important to be mindful of the client's emotional state going into conferences. This thoughtfulness can facilitate your conversation with the homeowner and help you frame your questions most effectively.

- Clients are frightened about the prospect of losing their home and are often intimidated by the legal process.
- Many clients cannot read well or comprehend the documents that they have received.
- Clients often have other problems in their lives such as illness, disability, unemployment, abuse, and separation or divorce.
- For all clients, VIP intake is a place to tell their story to someone who is sympathetic.

PRACTICE POINTS

Clients may become emotional – reassure them calmly and let them know you will do your best to help them.

Clients may go into great detail – keep them focused on the details *you* need to know by steering the conversation firmly but politely.

Initial Tasks for Volunteer Attorneys

- Obtain the homeowner's signature on VIP's representation agreement, which will be provided to you.
- Obtain the homeowner's signature on borrower's authorization to speak to the servicer, the lender, opposing counsel, and relevant federal and state agencies. This will be provided to you.
- Discuss the status of the case with the housing counselor and homeowner, then obtain a copy of the homeowner's budget information and loan work-out proposal if one has been submitted to the lender.
- Ensure that a list of documents required for the financial package has been approved by the lender's attorney and that the housing counselor, homeowner, and VIP staff each receive a copy.

See Appendix for court-recommended list.

PRACTICE POINT: The average time spent on a case is 11 hours over 4 to 6 months.

Available Resources

Attorneys have multiple resources available to help them determine a successful negotiation strategy, even if they have not dealt with mortgage issues previously.

These resources include the following:

- **VIP Referral Packet:**

When you volunteer to take a case for ongoing representation, VIP will send you a referral packet. This will include copies of all relevant case documents, including:

- Deed
- Mortgage and any assignments
- Property tax information and tax balances
- Civil docket as of the date of referral
- A copy of the referral letter sent to the client
- Client intake form
- VIP Representation Agreement
- VIP Mortgage Foreclosure Resources Reference Sheet

- **Legal Services Attorney:**

An attorney from legal services is available at court to assist with questions, pull up electronic copies of mortgages, deeds, and docket records, and review orders at your request. The legal services attorney at court also gives advice to housing counselors and VIP attorneys.

- **Malpractice Insurance:**

The volunteer attorney is covered under VIP's malpractice insurance for ongoing assistance to *eligible* clients only. If the client's income increases during the continued representation and you become aware of the increase, contact VIP to determine whether the client is still eligible. Loss of eligibility status is only relevant if the attorney has no other malpractice insurance coverage.

- **Documents Lender's Counsel Can Provide:**

You will need to formally request these documents. Once you have authorization from your client, the lender should be able to provide the following documents.

- The complaint
- A title report (possibly)
- An itemized list of arrearages, fees and costs, reinstatement amount and pay-off amount
- A payment history. The client should request this document directly from the lender if lender's counsel does not have a copy.
- The documents the homeowner submitted to lender's counsel as part of the financial packet.

Case Analysis

After speaking with the homeowner and housing counselor, a volunteer attorney should consider the following relevant questions and issues:

- Why did client become delinquent on the loan?
If the problem is or can be resolved, the client might have a better chance of reaching an agreement with the lender or servicer. If the problem is chronic or difficult to resolve, the client might want to carefully consider alternate means to avoid foreclosure, such as offering a deed in lieu of foreclosure or requesting permission to put the home up for short sale.
- How much is owed in arrears?
The amount in arrears will determine the work-out option your client can afford. Can the client pay the arrears in a lump sum? Over a five-year bankruptcy period? Should the arrears be capitalized and paid over the life of the loan? In a breakdown of the arrears, does any amount seem unreasonable (e.g., excessive attorney's fees) or disputable (e.g., multiple appraisals)?
- How often has client come back for a conference? Why?
If a homeowner has negotiated one or more unsuccessful arrangements with the plaintiff over a longer period of time, it might be difficult to settle on a mutually acceptable plan. On the other hand, if the homeowner has returned for a conference multiple times because of servicer errors or delay, the number of conferences might have no effect on negotiating an outcome.
- Has the client been setting aside funds for mortgage payments? If not, why not?
The plaintiff might be more amenable to work-out proposals if the client can show that certain payments are escrowed. If no funds are escrowed, it is important to understand why the client has not been able to save money.
- Who pays the property taxes? Who pays the homeowner's insurance?
Property taxes and homeowner's insurance are relevant for two reasons: First, they augment proof of who lives in the home. More importantly, back property taxes will result in a higher arrearage, as most lenders will advance the funds to pay the taxes and thus protect their loan's lien priority. Insurance payments affect the amount of the monthly loan payment, since lender-paid forced-place insurance is usually 150-200 percent more expensive than homeowner-paid insurance.
- Is there a second or third mortgage on the property?
The lender will not be inclined to negotiate a work-out agreement if a second or third mortgage is also delinquent. In Pennsylvania, the mortgage holder who takes the property to Sheriff's sale first gets paid first. Additionally, certain work-out options might not be available if there is another lien on the property.
- Does the homeowner have any other debt?
Additional liens on the home will affect what work-out options are available to a client. For

example, a bank will not accept a deed in lieu of foreclosure if there are liens on the property that cannot be removed prior to a title transfer. If the homeowner has other debt, that might affect whether she or he can afford a modified mortgage and whether she or he requires additional housing counseling.

**PRACTICE
POINT**

Attorneys are ***strongly*** encouraged to use the Conciliation Conference Issue Spotter Guide and Evaluating a Mortgage Foreclosure Diversion Case in the Appendix to evaluate options for the homeowner.

Negotiation Tasks for Volunteer Attorneys

- Reach an agreement with opposing counsel regarding postponement of their entry of judgment (or postponement of a sheriff’s sale). Under rules that went into effect January 1, 2011, so long as the homeowner appears at the first conference, a second conference is granted approximately 35 days hence and entry of judgment is automatically postponed to the day after the second conference.
- The order should include the date of the next conciliation conference. Entry of judgment should be postponed to the day *AFTER* the next conference. Be sure to review the order for accuracy.
- Ensure that all parties agree as to what the next steps required of each party shall be. If documents must be submitted to the lender’s attorney, request a list of the required documents and review with the housing counselor and the homeowner.

If There is No Agreement with the Lender’s Counsel

- If opposing counsel states that he or she does not have authority to postpone entry of a default judgment or to grant another conciliation conference, ask court staff for a judge pro tem (JPT) conference. The JPT can recommend that the judge order a postponement “over counsel’s objection.”
- If another conciliation conference date is not granted, request a status conference to occur by email or by phone between lender’s counsel, the housing counselor, the court administrator, and you (if you intend to keep the case). You should reserve the right to request another conciliation conference later, if necessary.

JUDGE PRO TEM

A judge pro tem, or JPT, is an experienced attorney who has participated in a special training and acts as a mediator. The JPT does not address issues that must be litigated (e.g., lack of standing, predatory lending) but will make recommendations to the judge. Once a JPT becomes involved, she or he often stays involved with the matter. Always ask for the JPT’s contact information.

For a sample JPT order, see Appendix.

Troubleshooting Process Problems

- The lender refuses to negotiate.
Examine whether retention of the home is truly affordable for the client.
 - If NO, evaluate other options.
 - If YES, ask court the for a conference with the JPT or the judge.
- Lender's counsel is unable to reach the plaintiff's representative to obtain a response.
The court will not permit a sheriff sale or entry of default judgment without a response from the lender. Another conference will be scheduled.
- The lender refuses to provide an answer or cannot be reached during multiple conferences.
The court can order a lender's representative with authority to negotiate to appear in person or be present by telephone during next conference. Please alert the Court Administrator if the lender's response is lagging despite multiple (more than five) conferences.

Concluding Conciliation Conferences

At the end of each conciliation conference, volunteer attorneys should:

- Obtain copies of the unsigned court order from court staff and the list of documents that the homeowner must submit (if applicable) from opposing counsel. Make sure that copies are given to the client, the housing counselor, VIP paralegals, and yourself.
- Exchange contact information with all parties: the client, the housing counselor, the lender's attorney, and the JPT (if the JPT will continue to monitor the case).
- Confirm with the housing counselor and the homeowner that communications will go to the lender's counsel.

ONGOING COMMUNICATION

In General

- It is essential that you take the initiative in communicating with the client, the client’s housing counselor, the lender’s attorney, and court staff to ensure that the negotiation process moves forward. **Do not wait for them to contact you!**
- Check the docket record on a regular basis. This can be done easily by going to www.courts.phila.gov and clicking on “Search Court Records”, then “Search Trial Division-Civil Dockets”, then “Civil Docket Record”, entering the Case ID (the docket number that is listed on your client’s intake form) and then clicking “Submit” and scrolling down to the bottom of the record to review the latest entries.
- A volunteer attorney is not the “attorney of record” and will therefore probably not receive copies of communications sent by the lender to the homeowner. That is why it is essential to follow up on a regular basis with your client to receive copies of any documents sent by the lender to your client.
- Again, you should insist that the homeowner forward copies of all documents she or he receives from the servicer or opposing counsel.
- VIP will email a status update request to you twice per year until the case closes. Thank you for responding to these requests.
- VIP staff is always available to answer questions and provide support!

Rescheduling an Upcoming Conciliation Conference

Should you need to reschedule an upcoming conciliation conference for an ongoing client, you should follow these steps:

- **Email opposing counsel to ask if they will agree to reschedule (with a copy to the housing counselor).** You should explain the reason for your request. If the issue is that the client is unable to attend (for good reason), opposing counsel and the court may agree to hold the conference with counsel present and excuse the client from appearing.
- **If opposing counsel agrees,** you should email Kate Dugan, law clerk to Judge Robinson, to alert her (at kate.dugan@courts.phila.gov), with a copy to opposing counsel and the housing counselor.

- **If opposing counsel does not agree**, you should email Kate Dugan to request that the conference be rescheduled, with a copy to opposing counsel and the housing counselor. Your email should explain the reason for your request and that opposing counsel opposed your request.

While Negotiating Settlements

- Request that both your client *and you* receive a copy of the written agreement. Again, it is important to remember that you are not the attorney of record unless you have entered your appearance in the actual foreclosure case, which you would do only if you file preliminary objections or an answer to the complaint.
- Remind your client to contact you upon receipt of the agreement so that you can review the agreement before it is signed. The turnaround time for these agreements is often short, but you should be granted more time upon request to lender's counsel.
- Review the agreement to determine if its terms are those negotiated at the conciliation conference – they often differ!
- Once the agreement is executed, obtain confirmation from opposing counsel and the case docket record that a praecipe to vacate the judgment and / or stay the sale and dismiss without prejudice was filed.

CLOSING THE CASE

Once a case is resolved, the volunteer attorney should send the client a termination letter and send VIP a brief closing report with details of the outcome. If your client's home was saved through a loan modification or other workout, copies of the signed agreement should be sent to VIP.

If your client's home was saved, **please request that the lender mark the case SETTLED, DISCONTINUED, AND ENDED on the docket.** It is imperative that all cases are discontinued with the courts, ensuring that should a future foreclosure occur, the lender must begin the foreclosure process from the start.

HOUSING COUNSELORS

Introduction

Housing counselors handle some of the most detailed financial work with homeowners, and are directly responsible for submitting work-out proposals. Their process for working with homeowners is described below.

- STEP 1: The counselor holds a face-to-face meeting with homeowner.
- STEP 2: The counselor gathers information about the homeowner's financial situation, including information about:
the type of mortgage (FHA, Conventional, VA, etc.)
the hardship and circumstances surrounding the delinquency
- STEP 3: The counselor completes all necessary forms, including those required by the homeowner's specific lender.
- STEP 4: The counselor submits applications to emergency mortgage loan assistance programs if homeowner is eligible.
- STEP 5: The counselor sends forms and supporting documentation to lender's counsel (and possibly also to the lender).

Typical Documents Completed or Collected

Usual Documentation

- Authorization to talk to the servicer on the client's behalf
- Income verification
- Bank statement(s)
- Utility bills
- Explanation of hardship (hardship letter)
- The list of documents that lender's counsel requires to complete the financial package.

Making Home Affordable* Documentation

** Note: Making Home Affordable is the federal mortgage assistance plan that includes the Home Affordable Modification Program (HAMP) under its umbrella. See www.hmpadmin.com for detailed information.*

- A Request for Modification and Hardship Affidavit.
- A request for a transcript of tax returns (IRS Form 4506-T).
- Income verification no more than 90 days old.
- Residency verification (a credit report or utility bill)
- Verification of monthly gross expenses (i.e. taxes, property insurance, alimony, child support)

Challenges Housing Counselors Routinely Face

- The proposal cannot be submitted any later than 10 days before first conference or 14 days before second conference.
- Documentation provided by the homeowner is missing or incomplete.
- Clients don't have required documentation available.
- Clients are difficult to reach.
- The conference might need to be postponed while more documentation is gathered, but opposing counsel refuses to agree to a postponement.
- The lender claims that documents were not submitted or were incomplete or requests additional documentation – if submitted documents are more than 90 days old once the packet is complete, a new packet with more recent documentation must be submitted.
- Programs – or lender-specific forms and requirements – are constantly changing.

RETENTION OPTIONS

A variety of options are available to help homeowners retain their homes. Once a housing counselor has detailed information about the existing mortgage and homeowner budget, one or more of the following solutions can be pursued.

Introduction to General Options

- Refinance the property.
- Apply to state and local payment assistance programs.
 - In Pennsylvania, HEMAP is available (administered by PHFA).
 - In Philadelphia, the Philadelphia Housing Retention Program gives grants until its annual allocation of funds is expended.
- Repay the loan.
- Obtain a forbearance agreement.
- Make a claim to the insurer if the homeowner has mortgage insurance. This is called a partial claim and includes all FHA loans.
- Request a reverse equity mortgage. These loans, available to senior homeowners age 62 and over, convert equity in the property into a loan that must be paid off only upon the homeowner's death or when the property is sold during the homeowner's lifetime.
- Modify the loan.

Introduction to FHA-Specific Options

The lender must evaluate a homeowner's eligibility for FHA options in a specific sequence. Lenders are not necessarily familiar with FHA guidelines, including FHA-HAMP, so housing counselors and attorneys must hold the lender accountable to ensure consideration of all options. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/faqsctc for an overview of these options. A summary of FHA-HAMP may be found in the Appendix.

Please confer with VIP staff or with the legal service attorney at the conciliation conference as she or he will be most familiar with FHA guidelines, which are constantly being revised.

PRACTICE POINT

In Pennsylvania, failure to consider FHA-mandated loss mitigation options is an equitable defense to the mortgage foreclosure action and might give the homeowner leverage within diversion program negotiations.

Refinancing

Definition

Refinance (aka “refi”): The borrower takes out a new loan that pays off the delinquent mortgage in full or in part and results in satisfaction of the mortgage. The lender must agree to a “short pay” if the refinance is less than what is owed. A homeowner in default is unlikely to be creditworthy enough to be approved for a refinance other than through a public program.

HEMAP Payment Assistance

Homeowners Emergency Mortgage Assistance Program

Definition

HEMAP is the Pennsylvania state payment assistance program for conventional (not FHA) loans. This provides a subordinate mortgage up to \$60,000.00 to pay for delinquency on a primary or secondary mortgage loan.

Requirements and Terms

- Only homeowners who become delinquent on their mortgage through no fault of their own – through death, unemployment, disability, etc. – are eligible.
- The homeowner must have a reasonable expectation of regaining employment and resuming mortgage payments.
- If the homeowner applies for HEMAP within 33 days of the Act 91 notice’s mailing, the lender cannot continue with the foreclosure until PHFA has made a determination. A homeowner can apply for HEMAP after the 33-day period, but the application will not stall the proceedings. Application must be made through a housing counseling agency.
- If denied for HEMAP, the homeowner can appeal the decision.
- HEMAP can provide a one-time lump sum payment to cover arrears or can provide monthly assistance for up to 24 months.
- A homeowner must begin repayment of the HEMAP loan immediately. The interest rate charged is set annually by PHFA, and for loans closed in 2016 the rate is 4.75%. The repayment amount is based on affordability. Minimum payments are \$25 per month. There is no set term on HEMAP loans.

Philadelphia Housing Retention Program

Definition

The Philadelphia Housing Retention Program (PHRP) is a grant program initially developed to prevent homelessness and now also available to homeowners facing foreclosure. PHRP can provide a grant of up to \$2,000 to be used towards delinquency, but only if the homeowner will then be current on the mortgage. The program receives funding from the City of Philadelphia annually in July and shuts down when the funds have been expended (usually by the spring).

Process

- The borrower must apply through one of certain specified counseling agencies.
- Strict income eligibility requirements apply.
- Proof of delinquency on the mortgage is required.
- Proof of availability of additional funds if needed to cure the delinquency must be submitted with the application for the grant.

Repayment Plan

Definition

Negotiating a repayment plan is the simplest work-out option for many homeowners. The plan is a written agreement where the borrower agrees to cure the delinquency by adding an amount to regular monthly mortgage payments until the loan is made current.

Requirements

- The repayment plan typically has a 3 -12 month duration.
- The plan must be made in writing.

Uses

Repayment plans are most successful when the homeowner has:

- A financial crisis that has been resolved.
- Been unemployed but has since found work.
- Recovered from a temporary disability.

Issues

- The homeowner must have sufficient income to make a higher payment.
- It is often difficult to complete a repayment plan without a significant income surplus.

Forbearance Plan

Definition

A forbearance plan is an agreement to suspend or reduce normal monthly payments for a fixed period of time. At the end of the forbearance period, the borrower must cure the default through a lump sum payment or long-term repayment plan or loan work-out.

Uses

Forbearance plans are most successful when:

- The cause of the default is specific and temporary.
- There is reasonable evidence that the borrower will be able to resume making payments by a certain date and will have surplus income to support a repayment plan.

Partial Claim

Definition

Partial claims are available primarily in the context of FHA mortgages but may also be available when the lender has private mortgage insurance.

Process and Requirements

- The insurer pays the lender the amount of the arrearage (the “partial claim”) to bring the homeowner current on the mortgage. This amount paid becomes a loan that the homeowner must repay over time.
- The borrower may not be more than 12 months in arrears when the application is made. However, the borrower can pay the arrearage down to 12 months if he or she has funds.

Reverse Equity Mortgage

Definition

A “reverse mortgage” is a loan that converts a senior homeowner’s equity in their home into a loan that can be used to pay off a mortgage or to provide supplemental funds for the senior’s needs.

Requirements

- The homeowner must be 62 or older. The amount of the loan depends on the value of the home, the value of any liens on the property (including a mortgage), and the homeowner’s life expectancy.
- The loan must be paid in full when the home is sold or when the homeowner who took out the reverse mortgage dies.

Risk

- If a co-owner of the property is less than 62 years old, only the senior may be on title and receive the mortgage, putting the co-owner at risk of losing the home upon the senior’s death.

Loan Modification

Definition

A loan modification changes the amount of the mortgage payment through a written agreement that permanently changes one or more of the loan's original terms, such as the:

- Interest rate
- Term
- Unpaid principal balance

Uses

Loan modifications are most appropriate when:

- The original loan terms were unreasonable and failure to modify the loan would result in foreclosure.
- The homeowner has a permanent or long-term reduction in income but still has sufficient income to make reduced mortgage payments.
- The original mortgage payment represents more than one third of the client's gross monthly income.

Issues

- Paperwork
- More work for servicer
- Extreme delinquency means that the lender may be unwilling to consider a modification or that the payments may actually increase as a result of the modification.

Key Steps to Ensuring Affordability

Homeowners and homeowner advocates may pursue the following solutions in order to make a loan more manageable for the borrower.

- Interest rate reduction, preferably permanent
- Principal reduction (rarely granted)
- Extension of the mortgage term (the number of years over which the mortgage must be paid)
- Extension of the amortization period (the number of years used to calculate the amount of the monthly mortgage payment; e.g., a loan may be amortized over 40 years but may have to be repaid over 30 years, with a balloon payment representing the remaining 10 years of payments due at the end of the 30-year term)
- Fees / costs reduction, including:
 - Inspection / appraisal fees
 - Late charges
 - Attorney's fees (ask for itemization)
 - NOTE: A reduction in fees is easier to negotiate before judgment than after judgment – entry of judgment adds approximately \$2,000 to attorney fees and costs.

Home Affordable Modification Program

Definition

The Home Affordable Modification Program, more commonly referred to as HAMP, is a part of the federal Making Home Affordable program. Any mortgage lender or servicer that received federal “bail-out” funds must participate in the HAMP program. If a homeowner’s mortgage is held or guaranteed by Fannie Mae or Freddie Mac, the homeowner must be offered a trial loan modification. There are special versions of HAMP for FHA and VA loans. HAMP is set to end on December 31, 2016.

For more information:

www.makinghomeaffordable.gov

www.hmpadmin.com

www.fanniemae.com/loanlookup

www.freddiemac.com/mymortgage

Eligibility

HAMP eligibility was expanded by the introduction of a HAMP Tier 2, effective June 1, 2012. Homeowners should first be evaluated for a Tier 1 modification. If they are not eligible for Tier 1 or fail a HAMP Tier 1 modification, they must be evaluated for HAMP Tier 2.

A homeowner will be eligible for HAMP Tier 1 if:

- The mortgage was obtained on or before January 1, 2009.
- The homeowner owes up to \$729,750 on his or her primary residence or single unit rental property
- The homeowner owes to \$934,200 on a 2-unit rental property; \$1,129,250 on a 3-unit rental property; or \$1,403,400 on a 4-unit rental property
- The property has not been condemned
- The homeowner has financial hardship and is either delinquent or in danger of falling behind on his or her mortgage payments (*non-owner occupants must be delinquent in order to qualify*).
- The homeowner has sufficient, documented income to support a modified payment.
- The homeowner must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.

A homeowner will be eligible for HAMP Tier 2 if:

- The monthly mortgage payment may be less than 31% of the borrower's gross income.
- The loan must be a first lien originated before January 2009.
- The property may be owner-occupied OR a rental property.
- The loan may have been previously modified under HAMP Tier 1, but not under HAMP Tier 2. If previously modified under Tier 1, the borrower must document a change in circumstances OR 12 months must have passed since the effective date of the first modification.

Note: Having filed for bankruptcy does not automatically make the homeowner ineligible for a HAMP evaluation.

Program Guidelines

Once the homeowner has met the initial eligibility criteria, the servicer must follow “standard modification waterfall” steps to reduce the PITI payment to 31% of the household’s gross monthly income. The investor must then calculate the net present value (NPV) of the income the investor can expect to receive from the modified loan and compare it to the net present value of the income the investor can expect to receive from proceeding to a foreclosure sale.

If the NPV of the modified loan payments is equal to or greater than the NPV of the foreclosure sale proceeds, the servicer must offer the homeowner a trial modification, which requires the homeowner to make at least 3 timely monthly modified loan payments. If NPV is negative for HAMP Tier 1, but positive for HAMP Tier 2, the servicer must offer a HAMP Tier 2 trial period plan, with payments set between 25-42% of the borrower’s gross income, and reduce principal and interest by at least 10%.

The HAMP Tier 1 modification waterfall steps to reduce PITI to 31% is as follows:

- Capitalization of arrear (add the arrear to the remaining mortgage)
- Reduction of the interest rate to no lower than 2%
- Extension of the loan repayment period up to 40 years (480 months)
- Forbear principal in a non-interest balloon payment (not required more than 30% of balance)
- Forgive a portion of mortgage principal (optional, very rarely done)

Under HAMP Tier 2, the steps are:

- Capitalization of arrear as in Tier 1
- Adjustment of the interest rate to the Freddie Mac Primary Mortgage Survey rate plus a small adjustment (currently 50 basis points)
- Extension of the loan repayment period up to 40 years (480 months)
- Forbearance of loan principal if pre-modification balance is greater than 115% of the property’s fair market value

The servicer must give the reason for the denial of a trial or permanent modification in writing to the homeowner. The homeowner may challenge the calculation used by the servicer to compute the NPV values of loan modification versus foreclosure sale but must do so in writing within 30 days of being notified of the denial.

If a trial modification has been denied without a written communication or for spurious reasons, the case can be escalated to the HAMP Resolution Center. Escalations are generally submitted on a standardized HAMP form to escalations@hmpadmin.com. Please contact VIP for additional information. Until a final determination is made on the homeowner’s eligibility for a HAMP modification, the servicer may not proceed to a sheriff sale of the property.

Once a homeowner in a trial modification has made 3 timely payments of the modified loan payments, the servicer is supposed to offer the homeowner a permanent loan modification. Since servicers often take many more months to offer a permanent loan modification to the homeowner, the homeowner should be advised to continue making the modified loan payments on a timely basis until a permanent loan modification is signed.

HAMP has a program that is designed to address the modification or release of second mortgages to avoid having the second mortgage go into foreclosure and derail the modification of the first mortgage.

Please refer to Appendix and to www.hmpadmin.com for a detailed HAMP Analysis Guide.

Lender Programs

Many lenders and servicers have their own in-house loss mitigation programs, which are in constant flux. The housing counselor will submit an application for a non-HAMP modification or other loan workout.

<p>PRACTICE VIP provides a binder at the conferences with information on federal, POINT: state, city and lender-specific programs.</p>
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NON-RETENTION OPTIONS

Sometimes letting a home go gracefully is the best option for a homeowner. There are many alternatives to a foreclosure and sheriff's sale that have a lesser impact on the borrower's remaining debt and credit rating. If the housing counselor determines that a homeowner cannot afford to keep the property, or if the homeowner does not want to keep the property, one or more of the following solutions can be pursued:

- Straight Sale
- "Short" Sale
- Mortgage Assumption
- Deed in Lieu of Foreclosure
- Sheriff's Sale
- "Cash for Keys"
- Home Affordable Foreclosure Alternatives (HAFA)

Straight Sale

Definition

The lender allows the homeowner to sell the property on the market for market value.

Uses

A straight sale is a good option if the homeowner cannot afford to keep the property but has equity in the property. A straight sale allows the homeowner to retain any equity that exceeds the balance of their mortgage.

Requirements

- The lender requires a valid listing agreement with a real estate agency.
- The homeowner needs enough time to complete the sale.

Short Sale

Definition

The sale of a property in which the borrower seeks less than the total amount due on the mortgage loan. Often, the lender will agree to accept less than the total amount due to satisfy the debt. However, a lender may also pursue a separate deficiency action against the homeowner after the foreclosure to try to obtain the remaining funds due.

Uses

A short sale is often the best option when a situation is incurable and the client has no equity in the property.

Short Sale **ALERTS**

- A deficiency judgment might follow a short sale. Homeowner advocates should ask the lender to waive the deficiency judgment.
- A short sale *must* be an arms-length transaction. The homeowner cannot receive any of the sales proceeds.

Mortgage Assumption

Definition

A qualified prospective buyer (e.g. a member of the homeowner’s family) will agree to take over, or “assume,” the liability for the loan payments. The person assuming the mortgage must meet all of the mortgage lender’s underwriting standards.

Requirements

The person who is assuming the mortgage must have a decent credit rating, title to the property, and sufficient funds to make the mortgage payments.

Deed in Lieu of Foreclosure

Definition

The borrower voluntarily conveys title to the lender in exchange for a discharge of any remaining debt.

Uses

A deed in lieu of foreclosure is most appropriate when:

- The property is abandoned.
- Other options have been exhausted.
- There are no other liens on property.

Issues

- The lender might require property to be listed for sale for at least 90 days before accepting a deed in lieu.
- A deed in lieu requires lender / investor approval.

Sheriff’s Sale

Allowing the home to go to sheriff’s sale might be the only option if the homeowner has little or no income. A sheriff’s sale is particularly undesirable for the homeowner because of its negative effect on credit ratings. After a sheriff’s sale, a homeowner might have difficulty finding a new place to live because of the low credit score.

Process

- Sheriff’s sales are held the first Tuesday of every month, no sooner than 3 months after entry of a default judgment.
- The homeowner has the right to “cure” the loan delinquency (i.e., pay off all the arrears and reinstate the loan) up to one hour before the sale.
- Once the sheriff’s deed transferring title to the new owner is recorded, the purchaser (or lender, if the property is retained) must file an action in ejectment to evict the homeowner. This process takes at least six to eight weeks if the homeowner does not defend.

Cash for Keys

Definition

The borrower agrees to leave the property on a certain date and in ‘broom-swept’ clean condition in exchange for a cash payment of up to \$3,000, saving the new owner the cost of an ejection.

Uses

- This is a good option when a default is incurable and the sheriff’s sale goes forward.
- A volunteer can often negotiate more time before homeowner must leave the property.
- The borrower receives funds to help with transition to a new property.

Home Affordable Foreclosure Alternatives (HAFA)

Definition

HAFA is part of the federal Making Home Affordable Program and is designed for qualifying borrowers who cannot afford to keep their homes. HAFA permits borrowers to exit their mortgages either through a deed-in-lieu or a short sale. Lenders and servicers receive financial incentives to offer these options to borrowers.

Requirements

- The mortgage must be owned or guaranteed by Fannie Mae, Freddie Mac or a HAMP mortgage servicer.
- Borrower must have a documented financial hardship.
- Borrower must have not purchased a new house within the last 12 months.
- The first mortgage must be less than \$729,750.
- Borrower must have obtained the mortgage on or before January 1, 2009.
- Borrower must not have been convicted within the last 10 years of felony larceny, theft, fraud, forgery, money laundering or tax evasion in connection with a mortgage or real estate transaction.

Distinctions from a traditional short sale or deed-in-lieu

- Borrower receives free advice from HUD-approved housing counselors and licensed real estate professionals.
- Unlike conventional short sales, a HAFA short sale completely releases borrower from the mortgage debt after selling the property. Borrower will no longer be responsible for the amount that falls "short" of the amount still owed. The deficiency is guaranteed to be waived by the servicer.
- In a HAFA short sale, the mortgage company works with borrower to determine an acceptable sale price.
- HAFA has a less negative effect on borrower’s credit score than foreclosure or conventional short sales.
- At closing, HAFA may provide \$3,000 in relocation assistance.

The source of the HAFA “Requirements” and “Distinctions” sections is the Making Home Affordable website: www.makinghomeaffordable.gov/programs/exit-gracefully/Pages/hafa.aspx

Foreclosure and Bankruptcy

WHAT IS BANKRUPTCY?

A practical definition: A proceeding brought in federal court by a “debtor” to discharge debts (relieve the debtor of personal liability) and/or reorganize financial affairs. Most individuals file a case under either Chapter 7 or Chapter 13 of the Bankruptcy Code.

Chapter 7

A Chapter 7 bankruptcy is a “straight bankruptcy” in which assets of a debtor are theoretically liquidated by a Chapter 7 trustee. Creditors who file claims are then paid off with the proceeds on a pro rata basis. In reality, most individual Chapter 7 cases are declared “no-asset” cases, with no distribution made to creditors. From beginning to end, a case usually lasts 3-4 months, after which the debtor is discharged of his obligation to pay most debts.

Chapter 7 is generally is not helpful for mortgage defaults. The purpose of Chapter 7 is to discharge personal liability only. Liens “ride through” the bankruptcy unaffected. Mortgage creditors are routinely allowed to proceed with foreclosure if mortgage is in default. In certain circumstances it may be helpful to discharge unsecured debt in a Chapter 7 or remove judgment liens in order to better facilitate a mortgage loan modification.

The Chapter 7 trustee controls the bankruptcy estate, making it difficult for a debtor to take action with respect to his/her home.

Eligibility for Chapter 7 is partly dependent on income, i.e. some potential debtors earn too much to file a Chapter 7. This generally will not be an issue for VIP clients.

NOTE: Both FHA and HAMP regulations expressly state that servicers must consider homeowners for HAMP even if they are in an “active bankruptcy.”

Chapter 13

A Chapter 13 bankruptcy is a reorganization in which a debtor with “regular income” may present a good-faith plan to make payments to creditors over a period of time (five years maximum). Income can be from any source, including unemployment compensation, public benefits, and contributions from friends/family. “Regular” does not preclude seasonal income. At the end of the payment period, most unpaid debts are discharged.

Chapter 13 debtors are allowed to use estate property. The Chapter 13 trustee’s purpose is to collect payments from the debtor and distribute them to creditors.

The biggest benefit of Chapter 13 for homeowners in default on their mortgage is the ability to cure the arrears over time (up to 5 years) - if income allows them to do so **and** maintain current mortgage payments at the same time. As a general rule, a Chapter 13 plan may NOT modify the rights of a secured creditor whose debt is secured by the debtor's primary residence. Therefore, the mortgage holder is entitled to all its contractual rights. This anti-modification protection does NOT apply to a second mortgage if the house is "under water" because of the first mortgage.

The bankruptcy court can provide a centralized forum to litigate claims against a mortgage holder/servicer to reduce the amount of arrears (and is generally more expedient than state court). A Chapter 13 debtor can also propose a plan to sell the home in a private sale to pay off the mortgage and realize any equity in the home. However, it is generally more cost-effective to do this outside of bankruptcy.

Chapter 13 can provide a way to consolidate other debts that need to be paid, such as car loans and outstanding income taxes, perhaps even at lower interest rates, making it more likely for the debtor to catch up with all debts with a lesser single monthly payment to the Chapter 13 trustee.

Chapter 13 may be helpful where the mortgage will mature within 5 years. In such instances the creditor's rights CAN be modified, i.e. the loan could be paid off at a lower interest rate and potentially eliminate post-petition fees and costs.

Bankruptcy rules require mortgage lenders and servicers to provide a very detailed breakdowns of arrears, including fees and costs, as well as file notice with the Court of any fees and costs that arise, including escrow advances, during the pendency of the Chapter 13 case. The Consumer Financial Protection Bureau (CFPB) promulgated regulations that became effective in 2014 that should make the process of calculating the mortgage loan delinquency more accurate, including any post-petition fees.

IMPORTANT CONCEPTS

1. **The Automatic Stay** - Few other legal steps can provide this immediate and powerful protection of bankruptcy. Functionally, the automatic stay is an injunction that springs into existence upon the filing of the bankruptcy petition. It prevents any attempt to enforce claims against the debtor or property of the debtor or property of the estate. It freezes a foreclosure proceeding and will prevent a sheriff's sale if notice is provided to the sheriff and creditor prior to sale.
 - a. Effect of Prior Bankruptcies - If the debtor had one or more bankruptcies within the prior year, the automatic stay may expire 30 days after the petition or may not spring into existence at all. If the debtor has abused bankruptcy in the past, there may also be prohibitions put in place by the bankruptcy judge.
 - a. Duration- The stay typically is in place for the length of the bankruptcy case, but a creditor may seek relief from the stay for cause. In Chapter 7, relief from stay is routinely granted to mortgage lenders if the loan is not current. In Chapter 13, relief from stay will be granted to the mortgage lender unless the plan proposes to cure arrears or otherwise pay off the loan.

2. **The Bankruptcy Estate** - The bankruptcy estate is created by the filing of the petition. It is broadly construed to include any and all property rights of the debtor as of the date of the petition. In Chapter 13 it includes property rights obtained post-petition. This includes expectant, contingent, and inchoate rights such as causes of action, and expected inheritances.
 - a. Exemptions – The debtor is allowed to exempt (carve out) certain amounts of property out of the estate under either the Bankruptcy Code exemptions or under state law. Generally the federal exemptions are more generous than Pennsylvania exemptions. Exception: entireties property (owned by husband and wife) under PA law is immune to individual creditors of husband or wife. Assets that are not exempted may have to be sold, either by a Chapter 7 trustee or by the debtor in Chapter 13 to fund his/her plan.

3. **The Discharge and Exceptions to Discharge** – Entered at the end of a bankruptcy case, the discharge absolves the debtor of personal liability on most debts as well as providing other protections, including a continuing injunction against collection of discharged debts. Some debts are excluded (excepted) from being discharged in bankruptcy, such as alimony, child-support, taxes, and student loans. In Chapter 13, some of these debts may be paid back over three to five years.

BASIC PROCEDURE AND TIMELINE

1. **Pre-Bankruptcy Credit Counseling Course.** Such a course is an absolute prerequisite to filing a bankruptcy case. It can be done online, over telephone, or in person.
2. **Paperwork.** A bankruptcy case is initiated by a 7-page Petition. In an emergency, this is all that needs to be filed, along with a certification that credit counseling was obtained, or exigent circumstances excused the failure to get it, and a list of all creditors.
 - a. Supporting schedules and statements must be filed within 14 days unless extension sought. At least one extension is usually granted. These are very in-depth documents designed to get full disclosure of a debtor's financial circumstances, including a list of all debts, assets, income, living expenses and prior financial activities.
 - a. Means testing: This requirement was added after the Bankruptcy Code was amended in 2005. It applies to debtors whose debts are primarily consumer (i.e. personal vs. business). The test essentially looks at a debtor's income for the six months prior to filing the bankruptcy and is used to determine whether a debtor should be in Chapter 7 or Chapter 13 bankruptcy and what the minimum length of a Chapter 13 plan should be.
3. **Meeting of Creditors.** This meeting is generally held 30-45 days following the filing of the petition. Creditors are invited to attend but rarely do. In most cases, this is the only proceeding a debtor has to attend. The Trustee (Chapter 7 or 13) questions the debtor regarding her petition. In Chapter 13, the Trustee also wants to ensure that the debtor's proposed plan is feasible, i.e. the debtor can afford the payments, and the plan is funded sufficiently to pay the claims that need to be paid.
4. **Discharge.**
 - a. In Chapter 7, the discharge order is generally entered about 60 days following the meeting of creditors. The case is closed.
 - b. In Chapter 13, discharge is entered after all plan payments are completed, generally three to five years after the petition date.
 - c. After the case is closed, the automatic stay ends, but the discharge injunction still protects debtor from collection of discharged debts.

DISADVANTAGES OF BANKRUPTCY

1. Cost.

- a. Attorneys' fees for a Chapter 7 case in Philadelphia typically range from \$1000-2000. In a Chapter 13, they are typically \$3000-\$4000. This is for basic bankruptcy services only, and usually does not include additional work such as lien avoidance motions. Attorneys' fees for a Chapter 7 must be paid in full before the filing. In Chapter 13, most attorneys will ask for some payment up front, usually in the range of \$1000, and get the rest of their fees from the payments made by the Debtor into the bankruptcy.
- b. Filing fees are \$310 (Chapter 13) to \$335 (Chapter 7) for the petition and initial paperwork. Subsequent motions/proceeding may entail additional filing fees.
- c. Cure amount in bankruptcy: Generally, you must pay the entire reinstatement amount and reasonable attorneys' fees and costs that might otherwise be recapitalized into the principal in a modification.
- d. Trustee's commission: If the homeowner is using Chapter 13 to cure mortgage arrears, an additional amount, up to 10% , will have to be paid to the trustee on the cure amount. Sale of the house in bankruptcy also includes a commission to the trustee and, depending on the amount of equity, may require payment of some unsecured debts that would not otherwise have to be paid outside of bankruptcy.

2. May Actually Delay A Modification.

While FHA and HAMP guidelines expressly allow modification to be considered by someone in bankruptcy, certain realities of bankruptcy law may make a modification difficult to pursue as efficiently as outside of bankruptcy.

- a. For example, in a Chapter 7 case, the debtor may have no standing to negotiate. The Chapter 7 trustee controls estate property for at least the first 60 days of the case, after which he/she is deemed to have abandoned the property to the debtor if no action is taken to administer the asset.
- b. Bankruptcy Court approval of modification may be required.
- c. The automatic stay precludes any continuation of negotiation through the Mortgage Foreclosure Diversion Program because it is part of the foreclosure action.

BANKRUPTCY ISSUE SPOTTING IN THE DIVERSION PROGRAM

The following are issues which may arise in the conciliation process and which should make you think about bankruptcy, including instances where bankruptcy may be raised by the lender's counsel.

1. Homeowner has significant unsecured debt making their debt-to-income ratio too high to qualify for a modification. A bankruptcy may address this, assuming the unsecured debt is not excepted from discharge (student loans, taxes, child support/alimony).
2. House is "under water" due to second or third mortgages. Depending on circumstances, including the type of mortgage and value of the home, secondary loans may be reduced or eliminated through a bankruptcy filing.
3. Homeowner has judgments against him/her which, under Pennsylvania law, may be liens against the residence. NOTE: judgments lose their lien status in five years unless renewed (42 Pa. C.S.A. §5526). Some lenders raise this because they have a policy of recording the modification agreement with the Recorder of Deeds, and wrongfully take the position that the modification would be lower in priority to the judgment liens. Depending on the amount of equity in the home and homeowner's ability to exempt it, bankruptcy can be used to eliminate judgment liens. However, this should not be required as a condition of modification. This should be taken to a JPT before considering bankruptcy to eliminate the judgment liens.
4. Lender is offering only a short repayment plan requiring a monthly payment that homeowner cannot afford. Chapter 13 may allow homeowner to repay over a longer term – five-year maximum.
5. There is significant equity in the property and lender will not forbear to allow homeowner to conduct a private sale. Sale in bankruptcy should be a last resort. You can almost certainly get a postponement of the foreclosure sale to allow for a private sale through a JPT or conference with the judge.
6. Lender will not give a loan modification or repayment plan to the homeowner because she/he is not on the Note but still has an ownership interest in the property. This may arise where the current owner inherited the property or the loan was taken out in the name of a co-owner with better credit. If homeowner is able to cure the arrears in five years, Chapter 13 is an option.
7. Homeowner was discharged in a prior bankruptcy. Some lenders/servicers have denied modifications because the homeowner has been discharged of personal liability, presumably out of fear of violating the discharge injunction. HAMP guidelines address this by requiring the following language to be inserted in Section 1 of the Home Affordable Modification Agreement:

“I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”

VIP Contact Information

You can always contact VIP with any questions or concerns that you cannot otherwise resolve. We are always here to provide guidance or advice whenever we can. **However, we do ask that our volunteer attorneys use our training materials as a primary resource.** Our most current training materials, including sample forms, are available at http://www.phillyvip.org/training_mentoring/training_materials.php (after you go through the disclaimer, under the “Mortgage Foreclosure” link on the left in the blue box), downloadable in Word and/or PDF format. Our website also contains recent developments and updates that are relevant to all of our mortgage foreclosure clients’ cases.

VIP can also connect volunteer attorneys and mentors with mortgage foreclosure experience. **We strongly encourage our volunteers to make use of these mentors for consultation on substantive or procedural legal issues not otherwise addressed by the training materials or by any outside resources they reference.** Please do not hesitate to contact VIP for referral to a mortgage foreclosure mentor.

The VIP staff can be reached at 1500 Walnut Street, Suite 400, Philadelphia, PA, 19102, (215) 523-9550, fax (215) 564-0845. The following are staff members at VIP whom you may also contact directly:

Kelly Gastley
 Managing Attorney
 (215) 523-9566
kgastley@phillyvip.org

Roxane Crowley
 Supervising Attorney
 (215) 523-9570
rcrowley@phillyvip.org

Michelle Reyes
 Pro Bono Case Manager
 (215) 523-9564
mreyes@phillyvip.org

Additional Resources

Philadelphia VIP Website

www.phillyvip.org

National Consumer Law Center

www.consumerlaw.org/issues/homeownership

Pennsylvania Legal Aid Network

www.palegalaid.net

Federal Program Information and Updates

www.makinghomeaffordable.gov

www.hmpadmin.com

www.fanniemae.com/loanlookup

www.freddiemac.com/mymortgage

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/lmmltrs

Appendix A

Sample Documents

VIP FORMS

VIP Eligibility Intake Form



VIP Intake for Potential Client from Diversion

Conference Date and Time: _____ **Number on Call List** _____ **Docket: #** _____

Client's Name: _____ **Marital Status:** S M D W Sep

Address of Property in Foreclosure: _____ **Zip Code:** _____

Is client living in property? Yes No Is client's name on deed? Yes No On mortgage? Yes No

Spouse's name on deed? Yes No On mortgage? Yes No Is spouse living in property in foreclosure? Yes No

What kind of legal assistance do you seek (check all that apply)? Representation at conferences Deed Transfer Probate

If you do not have title, did the lender provide you with a deadline by which you need to obtain title? _____

***For help with a deed transfer, probate or other legal matter, provide w/ legal services referral sheet and/or send to PLA table**

***Do not proceed with VIP intake unless: client seeks representation at conferences and/or needs a deed transfer within the next month**

CITIZENSHIP ATTESTATION (Will not affect services provided): I am a citizen of the United States of America.

SIGN YOUR NAME: _____ **Date:** _____

Phone Number (Cell, home, etc.): _____ **DOB:** _____ **Soc Sec #:** _____

Race: _____ **Gender:** _____ **Preferred language?** _____ **Interpreter needed?** Yes No

Veteran/Service Member Yes No

Number of Household Members: _____ **Adults (including client)** _____ **Children (under 18)** _____

<p><u>All income sources (gross amount per month) for each household member, including children</u></p> <p>Applicant has fixed debts and obligations? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Income expected to increase in next 3 months? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><u>Client's other assets</u></p> <p>Other homes?</p> <p>Rental properties?</p> <p>More than \$10,000 in savings?</p> <p>More than 1 car?</p> <p>Valuable jewelry?</p> <p>Valuable personal property?</p> <p><input type="checkbox"/> Skipped assets; receives TANF, General Assistance, or SSI</p>
--	--

Plaintiff: _____ **Servicer (co. send payments to):** _____

Housing Counselor's Name: _____ **HC Agency:** _____

Have you met with a Housing Counselor before today? Yes No Is the same Housing Counselor at court today? Yes No

What is the reason for payments becoming delinquent? _____

When was the last payment made? _____ Are you currently in bankruptcy? _____

Original mortgage loan amount? _____ Monthly mortgage payment amount? _____ Year obtained? _____

Proposal prepared by HC? _____ Submitted to lender? _____ Still waiting to hear from lender/servicer? _____

Applied for HEMAP? Why not? _____ How many conferences have you attended TOTAL? _____

Status of Negotiations: _____

Emergency Duty Attorney assigned to case (if any): _____



VIP Authorization to Release Information Form

AUTHORIZATION TO RELEASE INFORMATION AND RELEASE

I authorize Philadelphia VIP to allow any and all information obtained through the course of VIP's assistance to me in the Philadelphia Mortgage Foreclosure Diversion Program or related litigation to be provided to agencies and educational institutions partnering with VIP to conduct research on the Philadelphia Mortgage Foreclosure Diversion Program and mortgage foreclosure litigation. Partnering agencies and educational institutions may use the records provided by VIP as part of any research, writing or other presentations, including maps of this data; however, partnering agencies and educational institutions will guarantee that the individual identity of clients shall not be disclosed and cannot be discovered. All records and information remain attorney-client privileged and/or attorney work product and shall be treated as such by partnering agencies and educational institutions.

I release any person or entity complying with this Authorization from any and all claims relating to the disclosure of any such information and records. A copy of this Authorization shall be as valid as the original.

PLEASE NOTE: If you refuse to sign this Release, you are still eligible for free legal services from Philadelphia VIP.

Signature: _____

Date: _____

AUTHORIZATION TO SPEAK WITH THIRD PARTIES

**Authorization from Borrower(s) to
Release Loan Information to Third Parties**

My/Our Name(s): _____

Property Address: _____

Loan Number: _____

Mortgage Lender/Investor Name: _____

Servicer Name: _____

I am/We are the borrower(s) or the above referenced loan.

I/We hereby authorize the following party, _____, and the staff of Philadelphia VIP, to speak to lawyers and/or other personnel in the law firm of _____, to personnel of the lender/investor that owns our mortgage, to personnel of the company that services our mortgage, and to personnel of any state or federal agency, including but not limited to the U.S. Treasury Department, HAMP Escalations Team and MHA Help/HSC, the Department of Housing and Urban Development (HUD), and the Pennsylvania Housing Finance Agency (PHFA), as to all matters pertaining to the above loan. I/We understand that this authorization and any resulting negotiations do not constitute an agreement for an extension of time.

Borrower/Mortgagor

Date

Borrower/Mortgagor

Date

CONCILIATION CONFERENCE ORDERS

First Conciliation Conference Order

	Plaintiff,	:Court of Common Pleas	Conciliation Conference Date:
v.		:Philadelphia County	Housing Counselor:
		:	Housing Counseling Agency:
	Defendant	:Docket No.	VIP Attorney:
		:Day Forward Case No.	Other Attorney (include I.D #):

FIRST CONCILIATION CONFERENCE LISTING ORDER

AND NOW, this of 2016, upon consideration of the information provided to the Court, it is hereby ORDERED and DECREED that:

1. The Complaint and Case Management Order having been served on Defendant(s) at least fourteen (14) days prior to today's date, and Defendant(s) having failed to appear for the First Conciliation Conference, Plaintiff is free to enter a default judgment against Defendant(s) to the extent permitted by the applicable rules of Civil Procedure, the Case Management Order notwithstanding.
 2. The Complaint and Case Management Order having not been served on Defendant(s), the Conciliation Conference is cancelled. Plaintiff shall serve the Complaint on Defendant(s) and thereafter file a Praecipe with the Office of Judicial Records ("OJR") requesting that the Conciliation Conference be re-scheduled. The OJR shall schedule a Conciliation Conference at least 45 days from the filing of the Praecipe.
 3. The Complaint and Case Management Order having been served on Defendant(s) less than 14 days prior to today's date, the First Conciliation Conference is rescheduled in City Hall Courtroom 676, as follows:
 First Conciliation Conference Date and Time (at least 28 days from today) Date: _____ Time: _____.
 4. The Complaint and Case Management Order having been served on Defendant(s) at least fourteen (14) days prior to today's date, and Defendant(s) having appeared for the First Conciliation Conference Listing as ordered, a Second Conciliation Conference Listing is scheduled in City Hall Courtroom 676, as follows:
 Second Conciliation Conference Date and Time (35 days from today) Date: _____ Time: _____.
 Defendant(s) is/are required to submit their complete financial package to Plaintiff's counsel at least fourteen (14) days prior to the aforementioned Second Conciliation Conference Listing Date. Plaintiff is stayed from entering a Default Judgment against Defendant(s) before one day after the Second Conciliation Conference occurs or until such time as is stated in a subsequent Order.
 5. A bankruptcy petition has been filed. Upon termination of the automatic stay, Plaintiff shall file a Praecipe requesting that a Conciliation Conference be scheduled. Plaintiff is stayed from entering a Default Judgment against Defendant(s) before one day after the First Conference occurs or until such time as is stated in a subsequent Order.
 6. Case has been (or will be) discontinued by Plaintiff. Reason (select one)
 Home Affordable Modification Program Loan Modification Loan has been paid in full Traditional Loan Modification
 Deed in Lieu of Foreclosure Short sale Other: _____
 Loan has been brought current by the following: Repayment Agreement Forbearance Agreement Full Arrears Payment
 7. The parties have entered into the following agreement:(select one):
 Repayment Agreement Forbearance Agreement
 Home Affordable Modification Program Trial Plan Traditional Modification Trial Plan Other: _____
- Further Disposition (select one):
 The Agreement will not result in the loan being brought current. A follow up conciliation conference is scheduled for _____ at _____ o'clock in City Hall Room 676. Plaintiff is stayed from entering a Default Judgment against Defendant(s) before one day after this conference occurs or until such time as stated in a subsequent Order; or
 The Agreement will result in the loan being brought current as long as there is no breach by Defendant(s). If there is a breach by Defendant(s), then Plaintiff shall, prior to taking judgment, serve a notice of intention to take default judgment pursuant to Pa. R.C.P. No. 237.1 with an attached notice of the Save Your Home Philly Hotline. These notices shall be served on Defendant(s), counsel for Defendant(s) (if any), the Housing Counselor, and the VIP attorney (if any) (indicated above) in care of Philadelphia VIP. If Defendant(s) complete(s) the plan, then Plaintiff shall discontinue this case.
8. Plaintiff is free to enter a default judgment against Defendant(s) to the extent permitted by the applicable rules of Civil Procedure, the Case Management Order notwithstanding.
 Reason:
 The parties agree the subject property is non-residential and/or non-owner occupied. A default judgment shall not be entered before _____
 The parties have agreed that the subject property shall be sold at Sheriff's sale no earlier than _____
 9. Other: (describe) _____

 Date: _____
 Attorney for Plaintiff

 Date: _____
 Defendant(s) or Attorney for Defendant(s)

BY THE COURT:

 The Honorable Rosalyn K. Robinson

Second and Subsequent Conference Order

	:Court of Common Pleas	Conciliation Conference Date:
Plaintiff,	:Philadelphia County	Housing Counselor:
v.	:Docket No.	Housing Counseling Agency:
Defendant(s)	:Day Forward Case No.	VIP Attorney:
		Other Attorney (include I.D. #)

ORDER FOR SECOND AND SUBSEQUENT LISTING OF CONCILIATION CONFERENCE

AND NOW, this ____ of _____ 2016, upon consideration of the information provided to the Court, it is hereby ORDERED and DECREED that:

1. Plaintiff is free to enter a default judgment against Defendant(s) to the extent permitted by the applicable rules of Civil Procedure, the Case Management Order notwithstanding.
Reason (select one):
 - The failure of Defendant(s) to appear
 - The parties agree the subject property is non-residential and/or non-owner occupied. Judgment may not be entered earlier than _____.
 - The parties have agreed that the subject property shall be sold at Sheriff's sale no earlier than _____.
 - The unexcused failure of Defendant(s) to forward the required financial information to Plaintiff's counsel at least fourteen (14) days prior to today's date.

2. The parties have entered into the following agreement: (select one):
 - Repayment Agreement Forbearance Agreement Other:
 - Home Affordable Modification Program Trial Plan Traditional Modification Trial Plan Other:

Further Disposition (select one):

 - The Agreement will not result in the loan being brought current. A follow up conciliation conference is scheduled for _____ at _____ o'clock in City Hall Room 676. Plaintiff is stayed from entering a Default Judgment against Defendant(s) before one day after this conference occurs or until such time as stated in a subsequent Order; or
 - The Agreement will result in the loan being brought current as long as there is no breach by Defendant(s). If there is a breach by Defendant(s), then Plaintiff shall, prior to taking judgment, serve a notice of intention to take default judgment pursuant to Pa. R.C.P. No. 237.1 with an attached notice of the Save Your Home Philly Hotline. These notices shall be served on Defendant(s), counsel for Defendant(s) (if any), the Housing Counselor, and the VIP attorney (if any) (indicated above) in care of Philadelphia VIP. If Defendant(s) complete(s) the plan, then Plaintiff shall discontinue this case.

3. Case has been (or will be) discontinued by Plaintiff. Reason (select one):
 - Home Affordable Modification Program Loan Modification Loan has been paid in full Traditional Loan Modification
 - Deed in Lieu of Foreclosure Short sale Other:
 - Loan has been brought current by the following: Repayment Agreement Forbearance Agreement Full Arrears Payment

4. A bankruptcy petition has been filed. Upon termination of the automatic stay, Plaintiff shall file a Praecipe requesting that a Conciliation Conference be scheduled. Plaintiff is stayed from entering a Default Judgment against Defendant(s) before one day after the Second Conference occurs or until such time as stated in a subsequent Order.

5. The parties are attempting to reach an agreement. A new conciliation conference is scheduled for _____ at _____ o'clock in Courtroom 676 City Hall, Philadelphia. Plaintiff is stayed from entering a Default Judgment against Defendant(s) before one day after this conference occurs or until such time as stated in a subsequent Order. Sheriff Sale is scheduled/postponed to _____ 2016.

6. Other: **(Describe)**

_____ Date _____ _____ Date _____
Plaintiff or Counsel for Plaintiff **Defendant(s) or Counsel for Defendant(s)**

BY THE COURT:

The Honorable Rosalyn K. Robinson

JPT Order

**FIRST JUDICIAL DISTRICT PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION**

PLAINTIFF : _____

DEFENDANT : **CASE ID**

PLAINTIFF'S COUNSEL

DEFENDANT'S COUNSEL/COUNSELOR

JUDGE PRO TEM

RECOMMENDATION(S)

JUDGE PRO TEM SIGNATURE

Appendix B

Conciliation Conference

Issue Spotter

Question #1

Will the client be able to afford the house in the future?

Facts to Consider

Think through the elements of affordability (i.e., the total debt to income ratio), including

- The value of the home versus the balance of the mortgage.
- The client's other debt.
- Whether there is a second mortgage.
- Whether the housing counselor realistically determined the client's budget.
 - Did the housing counselor consider food, prescriptions, utilities, etc.?
 - Are all expenses included (e.g., assistance to other family, school tuition, etc.)?

Subsequent Action

- If the budget IS realistic, then a home retention option might be manageable.
- If the budget IS NOT realistic, then a non-retention option such as a short sale, mortgage assumption, deed in lieu of foreclosure, and/or "cash for keys" might be more appropriate.

Question #2

Is the client a current service member or veteran?

If the client is an active service member or the dependent of an active service member, review the Servicemembers Civil Relief Act (50 U.S.C. § 501 *et seq.*)

- If the client is not currently an active service member or is a veteran, see whether the client is eligible for a VA refinancing program. The client can contact the Veterans Affairs Regional Loan Center at 1-877-827-3702.

Question #3

Is the mortgage a VA Home Loan?

- Help the client determine whether the client is eligible for VA-HAMP or another VA refinancing program: Have the client contact the Veterans Affairs Regional Loan Center at 1-877-827-3702.

Question #4

Is the client eligible for the federal government's Home Affordable Modification Program (HAMP) or HAMP Tier 2?

- The loan is held by Fannie Mae or Freddie Mac, or the servicer is a HAMP participant – search http://makinghomeaffordable.gov/contact_servicer.html.
- See Training Manual, pages 26-28 for description of HAMP eligibility. Also see Appendix C for HAMP Analysis Guide.

If the client is eligible for HAMP, please confer with the housing counselor or refer to <http://www.makinghomeaffordable.gov/pages/default.aspx>.

FHA Loan Requirements

Please refer to the FHA-HAMP requirements described in VIP's online HAMP handout.

Question #5

Is the client eligible for a Philadelphia Housing Retention Program grant? (Division of Social Services - Office of Supportive Housing)

This program provides a small grant in targeted zip codes as mortgage assistance to prevent homeowners from losing their homes. If your client is only slightly in arrears or needs to make a relatively low lump-sum payment (\$2,000 or less), talk to your housing counselor and VIP about the Housing Retention Program.

Requirements

- The client is the title owner.
- The client must be able to make mortgage payments after receiving this grant.
- The client must reside in specified zip code areas.
 - Clients with dependent children: 19104, 19121, 19122, 19132, 19133, 19134, 19139, 19140, 19143, 19144, 19145, or 19146.
 - Clients without dependent children: 19121, 19122, 19132, 19133, 19134, 19140, 19144, 19145, or 19146.

Evaluating a Mortgage Foreclosure Diversion Case

Review the VIP intake form and use it as the basis for additional questions:

Question #1

Who is on the deed and/or the mortgage?

Possible Responses

- Client alone
- Client and spouse
- Client and someone else (who?)

If the person on the deed or the mortgage is not the client, then who is that person? A parent? A spouse? A fraudulent deed transferor? The lease-purchase owner?

- There might be a problem with a fraudulent mortgage, fraudulent deed transfer, or client might need to probate an estate or file a quiet title action – contact VIP for assistance.

Question #2

If more than one person is on the mortgage and / or deed, are they all present at the conference? If not, why not?

- In general, the individual actually living in the property should be our client. If more than one person is at the conference and they are working together to save the home, include everyone in the interview, but note that only the person residing in the property (or with an ownership interest in the property and wishing to return) is our client.

Question #3

How many people are in the household?

- If there are other adults, what is their income? If there is no income, then why not?
- If there are children, do they get Supplemental Security Income (SSI) or other support (child support, etc)?
- Are there renters in the household? How much rent do they pay?

Including other adults' or children's income / benefits might be beneficial to the loan modification application if the income can be relied upon and can be documented. This question also helps to identify which adults could be contributing to household expenses if they are not already doing so.

Question #4

To whom did client send mortgage payments? Is it the same party as the plaintiff in the case?

If the plaintiff and payee are not the same, this may indicate that the mortgage has been assigned, the servicer is not the plaintiff in the case, or plaintiff is not actually the owner of record. These are potential grounds for litigation and might have resulted in accounting errors on the lender's part.

Question #5

What are the current terms of the mortgage?

- Interest rate?
- Fixed or adjustable?
- Term of mortgage (number of years over which to repay)?
- When was mortgage obtained?
- How far is the mortgage in arrears?

Attorneys should know these facts about the mortgage and loan to negotiate effectively.

Question #6

What is the monthly payment? Does it include property taxes and insurance? If not, how much are property taxes and insurance (TI)? Take the full amount and divide by 12 to get monthly cost of TI. Add this figure to monthly Principal and Interest (PI) payment to get the total monthly payment (PITI).

To calculate percentage of monthly income that goes towards PITI, divide the monthly PITI payment by monthly gross income (income before deductions) and then multiply by 100 to get a percentage. Under HAMP, if income is SSI or other non-taxable income such as TANF (welfare), food stamps, or VA benefits, multiply the income by 1.25 to get gross monthly income.

If the resulting percentage is greater than 31%, then the client might be eligible for a HAMP modification.

Question #7

Are there other mortgages on the property? Is the client current on those payments?

→ More than one mortgage on the property complicates the loan workout, particularly if both are delinquent.

Question #8

Does client have other debt – unpaid utility bills and/or property taxes, credit card debt, car loans, medical bills?

- Water/sewer bills, property taxes and Department of Public Welfare claims against estate for Medical Assistance are liens against the house that are paid with the proceeds of a sale before any mortgage gets paid.
- Gas / electric, credit card and medical bills are not liens against the house unless they are reduced to judgment by a court. These bills are paid off after the mortgage gets paid.
- If the client has a large amount of unsecured consumer debt, the client might benefit from declaring bankruptcy in order to improve his or her financial situation – the client needs to consult with a bankruptcy attorney.

Question #9

How far is the client behind in paying the mortgage? How many payments did the client make before defaulting on the loan? Did the client make payments on time or late?

- The client needs to be at least two payments behind to qualify for HAMP.
- There used to be a 12-month arrears limitation on FHA-HAMP, but as of late 2012 this is no longer the case.
- An unemployed homeowner cannot be more than 3 months behind in order to be eligible to request a 3- to 6-month forbearance with reduced payment under HAMP for unemployed homeowners.

Question #10

What is the reason for the default? Did the client obtain a repayment / forbearance / loan modification before the current delinquency? Has the client filed for bankruptcy before?

- Determine whether the original mortgage was ever affordable.
- Explore the client’s payment and delinquency history – it may affect the mortgagee’s willingness to enter into a workout.

Question #11

Has housing counselor put together a budget? What expenses can be cut from the budget (realistically)?

- Take a look at budget and see if it passes “gut check” test – it should include:

- All income available to client (including rent from a renter under a signed lease, contributions from other adults in the household, benefits going to children and/or spouse, child support).
- All household, work and transportation expenses.

Question #12

Has client been saving up the money not being paid towards the mortgage? How much does client have saved?

- The client should be reminded to save excess income not going towards monthly expenses so that the client can demonstrate ability to make modified mortgage payments.
- For non-HAMP programs, an initial larger payment towards the arrearage is often required in order to obtain a loan modification or repayment plan.

Question #13

Does the client have family who can help with finances?

- For HAMP, income received from other family members or from an ex-partner or spouse paying child support does not have to be included in the budget, but it can be if the client so desires.
- If a family member pays for a child’s school tuition or other larger expenses on a regular basis, that should be noted in the budget. The family member may be able to help with down payment on the arrears if required.

Question #14

Does the client have sufficient funds left after all necessary expenses are paid to make a mortgage payment that covers property taxes, homeowner’s insurance (hazard insurance, at a minimum), and sufficient principal and interest to allow the loan to be paid off in 30 or 40 years?

- The housing counselor should have made this calculation.

Question #15

Has the client / housing counselor submitted all of the financial documentation requested to the lender’s attorney? Was it for HAMP or for other loss mitigation? What was the result of the submission?

- If the client applied for HAMP, did the client submit two most recent paystubs with year-to-date income information, two most recent signed income tax returns, IRS Form 4506-T, and a Request for Modification and Affidavit (RMA) form or the lender’s proprietary application and a Hardship Affidavit?

- If the client did not apply for HAMP, what did the client submit, and what was the loan workout option requested?
- To whom was this information submitted, and how was the information submitted – fax, email, hand delivery? Was receipt confirmed by the lender’s attorney?
Under the diversion program rules in effect January 1, 2011, the lender’s attorney is the primary recipient of the application, but in addition, the information may be submitted to the lender as well.

Question #16

Which retention options has the housing counselor identified as feasible?

- Loan modification (HAMP, HAMP Tier 2, FHA-HAMP, VA-HAMP, in-house)
- Repayment plan
- Forbearance
- Partial claim (FHA loans)
- Refinance mortgage (FHA)
- Buy-out by a family member

Question #17

If no home retention option is possible, what is the housing counselor’s recommended disposition option?

- Market sale
 - Short sale
 - Deed in lieu of foreclosure
 - Sheriff’s sale
- For all non-retention options except a market sale, will the housing counselor seek Cash for Keys?

Question #18

If this is the client’s second or subsequent conference, what is the current status of the case?

- Has a default judgment been entered?
- Has the sheriff’s sale been scheduled? When?
- Has the sheriff’s sale been postponed? How often?

Appendix C

HAMP ANALYSIS GUIDE

- 1. Is the mortgage insured by FHA (Federal Housing Administration) or the VA (Veterans Administration)?** This can be determined by asking the housing counselor or reading the mortgage document.

YES: Consult FHA loss mitigation and FHA-HAMP guidelines or VA-HAMP guidelines.

- 2. Is the mortgage owned guaranteed by Fannie Mae or Freddie Mac (GSEs – Government Sponsored Enterprises)?** Check at following sites/numbers:

Fannie Mae - www.fanniemae.com/loanlookup, 1-800-7FANNIE
(8am to 8pm EST Mon.-Fri.)

Freddie Mac - www.freddiemac.com/mymortgage, 1-800-FREDDIE
(8am to 8pm EST Mon.-Fri.)

- 3. If the loan is not a GSE-secured mortgage, does the servicer of the loan participate in HAMP?** Check at following site:

http://makinghomeaffordable.gov/contact_servicer.html.

NOTE: Even though the loan servicer may participate in HAMP, this does not guarantee that the investor will agree to a loan modification. The servicer is obligated to make a reasonable effort to obtain the investor's approval for a loan modification under HAMP, but there is no independent way for a homeowner to verify a servicer's claim that the investor does not permit loan modifications unless the court orders plaintiff's counsel to produce the servicing agreement and evidence of the servicer's attempts to obtain approval. Getting to the bottom of a denial based on unexplained investor "guidelines" may require a session with a judge pro tem (JPT).

NO: Not eligible for HAMP.

- 4. Is the client on the deed but not on the mortgage?**

YES: Client may be eligible for a loan modification – consult VIP staff.

NO: If client is neither on the deed nor on the mortgage but has some legal right to the property (e.g., client is an heir or the administrator of the estate of the deceased owner of record or is a family member of the living owner of record), there may be instances in which the client can obtain a loan modification under HAMP – please consult VIP staff.

- 5. Is client on the mortgage but not on the deed?**

YES: Client may have co-signed for the mortgage because of better credit; alternatively this might indicate that mortgage is fraudulent or that record

owner fraudulently transferred title out of plaintiff's name – please consult VIP staff

6. Are all of the following requirements satisfied?

- The property is the client's primary residence and is currently occupied.
- The property has 1-4 units.
- The unpaid principal balance of the mortgage no more than \$729,750 for a 1-unit property (higher limits if more units).
- The mortgage originated on or before January 1, 2009.
- The mortgage was not previously approved for a trial or permanent HAMP modification.

NO: If any one of these requirements is not met, the mortgage is not eligible for HAMP.

7. Has client filed for bankruptcy, either before or during the HAMP evaluation process?

YES: Borrower is still eligible for HAMP loan modification evaluation – please consult VIP staff or HAMP website for details.

8. Does client (include other adults in the household or family who are willing to contribute to mortgage payment) have income that can be verified with documents (e.g., pay stubs, income tax returns, benefit award letters)?

YES: Does any of the income consist of unemployment benefits?
Unemployment benefits may no longer be included in household income; however, unemployed homeowners may be eligible for a 3- to 6-month forbearance (must pay only 31% of their reduced income to the lender) while they search for work if they are no more than 3 months behind in payments.

NO: Not eligible for HAMP.

9. Does the client's income include untaxed income (e.g., SSI, welfare, food stamps)? Can the client provide only a net income figure?

YES: "Gross up" untaxed or net income by multiplying it by 1.25 to get gross household income; otherwise, use monthly income before any deductions are subtracted as evidenced by paystubs or tax returns.

10. How much is client's current monthly mortgage payment? Add up Principal, Interest, property Taxes, homeowners Insurance premiums (hazard and/or flood), and homeowners association or condo fees to obtain the PITI amount, but do not add mortgage insurance premiums or mortgage payments to other lenders.

NOTE: If the mortgage company has a “force placed” insurance policy on the property because client let insurance lapse in the past, the insurance cost is usually at least 50% higher than if client obtained her own policy. This is something for the client or the housing counselor to look into in order to lower the monthly payment, but the client must usually provide proof of prepayment for one year to the lender before the lender will drop its policy.

11. Divide PITI by the client's (or household's) monthly gross income (income before taxes and other deductions are subtracted) and multiply by 100 to calculate the percentage of client's monthly gross income the mortgage payment represents – this is the “front end ratio.” Is the front end ratio lower than 31%?

NOTE: Client is not required to but can include alimony, separation maintenance or child support income to qualify for HAMP, but only if including the income does not bring the “front end ratio” below 31%.

NO: Not eligible for HAMP loan modification, but might still qualify for other retention options, including HAMP Tier 2.

12. Add up all of client's recurring monthly or other regular payments for mortgages, car loans, credit card bills, alimony/child support, and consumer debt, then divide total debt by client's (or household's) monthly gross income and multiply by 100 to calculate the percentage of monthly gross income the total monthly debt represents – this is the “back end ratio.” Is the back end ratio less than 55%?

NO: Client might still qualify for HAMP modification but must participate in a credit counseling program in order to qualify for a loan modification.

13. Submit a HAMP application:

Request for Modification and Affidavit – servicer must accept the RMA or its equivalent (servicer’s proprietary application forms and a Hardship Affidavit); in practice, most servicers require applicants to use their own proprietary forms, but under the guidelines, they must accept the RMA if submitted by applicant

IRS Form 4506-T or 4506T-EZ – must be signed by borrower(s).

Income documentation – may not be more than 90 days old as of the date the completed financial packet is received by the servicer:

- most recent federal income tax return
- copies of two most recent paystubs or copy of most recent profit and loss statement (for self-employed borrowers)
- other earned income: must have third-party documentation
- benefit income: evidence of amount and frequency of payments, evidence of the receipt of payments (unemployment benefits are no longer considered countable income under HAMP)

- rental income (provide copy of lease agreement)
- alimony, separation maintenance payments, child support: legal document stating amount and frequency of payment, evidence of receipt of payments

14. How loan modification eligibility is calculated by the servicer, assuming other HAMP eligibility requirements discussed above have been met:

- a. Multiply monthly gross income by 31% to obtain the “target monthly mortgage payment” (PITI).
- b. Subtract monthly property taxes, insurance and homeowners association or condo fees from the target payment to obtain the target monthly principal and interest payment (P&I).
- c. To reach the target P&I payment, take the following steps in order:
 - 1) Capitalize accrued interest, escrow advances and servicing advances (to 3rd parties) – but not late fees! – by adding to unpaid loan balance.
 - 2) Reduce interest rate in .125% increments to not less than 2%.
 - 3) Extend mortgage term by up to 480 months (40 years); servicer may also decide to extend the term by up to 30 years but amortize over 40 years, which results in a balloon payment at the end of the 30-year term (may be done only if necessary to reach the target payment).
 - 4) Forgive principal to bring payment down – this is strictly voluntary and rarely done by servicer.

NOTE: Steps a, b and c should have been completed by the housing counselor before the HAMP application was submitted in order to determine whether a HAMP modification is a viable option (software used is called CounselorMax).

- d. Calculate the NPV (net present value) of the proceeds expected from a modified loan to the NPV of the proceeds expected from proceeding with foreclosure.
 - If the NPV of the proceeds from the modified loan is greater than the NPV of the proceeds from a foreclosure (a positive test result), then a loan modification must be offered to the borrower.
 - If the NPV of the proceeds of the modified loan is smaller than the NPV of the proceeds from a foreclosure (a negative test result), then a loan modification may be offered to the borrower but is not mandatory.

NOTE: The more equity the borrower has in the home, the less likely it is that the NPV test will have a positive result. If the borrower’s application is denied and the reason given is that the application failed the NPV test, the borrower can request the variables used in the calculation and then lodge an appeal if one of the variables used is inaccurate (e.g., the appraised value of the home) – please consult VIP staff.

15. Servicer guidelines regarding communications about HAMP applications:

- If packet sent to servicer was incomplete, servicer must acknowledge borrower's HAMP application within 10 business days following receipt of application by sending a written notice describing the HAMP process, listing the documents still needed, and providing a specific date by when the documentation must be submitted by borrower.
- If packet sent to servicer was complete, servicer must complete its evaluation of borrower eligibility and notify borrower of its determination within 30 calendar days following receipt of the complete application:
 - If borrower is **approved** for a trial modification, servicer must send a notice with the starting date for the trial modification and the amount to be paid; in order to accept the offer, borrower must send the first payment no later than the end of the month in which it is due (payments must always be received by the end of the month in which they are due in order to be considered timely).
 - if borrower is **denied** for a trial modification, servicer must communicate that determination to the borrower in writing and provide a reason for the denial; servicer must also consider the borrower for other foreclosure prevention options, including an in-house modification (non-HAMP modification).

NOTE: If the borrower's mortgage is eligible under HAMP but is denied because the target payment cannot be achieved or because the NPV test is negative, the borrower can appeal the denial – please consult VIP staff.

16. If a HAMP application is approved, the borrower enters into a trial period for three or more months:

- The borrower must keep making timely payments (by the end of the month in which each payment is due) until a permanent loan modification is offered and signed by both borrower and lender. Not making continuing timely payments will result in denial of the permanent loan modification.
- Before a permanent loan modification can be offered, the borrower must submit additional income verification documents, but unless the borrower's income has increased by more than 25% since the application was first submitted, no new NPV calculation should be made.
- VIP attorney should continue to follow up with borrower and with lender's counsel to ensure that payments are being made and lender is prepared to offer a permanent loan modification to borrower after 3 months of trial

modification payments; ensure that borrower and housing counselor submit income verification documents to lender as soon as requested.

- If borrower is offered a permanent modification, ask to see a copy before borrower signs; calculate whether PITI payment amount corresponds to 31% of client's gross income before borrower signs. Borrower must sign and return the agreement before the modification goes into effect and must make all payments in a timely manner in order to remain eligible for the modification.

17. Guidelines regarding continuation of foreclosure proceedings while borrower is being evaluated for HAMP:

- Once the HAMP evaluation process has been initiated, the foreclosure can proceed while borrower is being evaluated, but the property cannot go to sheriff's sale until the HAMP determination has been made and communicated to the homeowner in writing. The VIP attorney's and housing counselor's goal should be to avoid entry of default judgment as long as possible, until all retention options have been considered by lender.

18. If denied HAMP, has the housing counselor applied for HAMP Tier 2?

- See Training Manual at pages 26-28, or contact VIP staff for more information on HAMP Tier 2.

A Note on FHA Loss Mitigation

The Federal Housing Authority (FHA) insures many mortgage loans that participating lenders make with low-income borrowers. In order to protect FHA from excessive claims, the U.S. Department of Housing and Urban Development (HUD) requires servicers to engage in rigorous loss mitigation efforts prior to foreclosing on a property. 24 C.F.R. § 203.501.

In many states, courts have ruled that failure to follow HUD's prescribed loss mitigation guidelines can be an equitable defense to foreclosure. Pennsylvania agreed in *Fleet Real Estate Funding Corp. v. Smith*, 366 Pa. Super. 116, 530 A.2d 919 (1987).

After 30 days without receiving a mortgage payment, the lender is encouraged to recommend the homeowner attend face-to-face pre-foreclosure counseling.

Within 60 days, the lender *must* send the homeowner a copy of HUD's brochure, "How to Avoid Foreclosure."

Within 90 days, lenders must at least *consider* delinquent borrowers for the following loss mitigation efforts following this particular sequence outlined by HUD:

If the homeowner can afford the mortgage payments, he or she must be considered for a:

1. Special forbearance
2. Loan modification
3. Partial claim

If the homeowner cannot afford the mortgage payments, he or she must be considered for a:

1. Pre-foreclosure sale
2. Deed in lieu of foreclosure

Servicers may also consider combinations of various remedies in order to make payments affordable for the borrower.

**DOCUMENTS TO BE SUBMITTED TO
OPPOSING COUNSEL**

Workout Proposal Checklist

WORKOUT PROPOSAL REQUIRED MATERIALS

Required Documents needed are checked off

Homeowner Name: _____

Date of the Request: _____

- Hardship Letter
 - HAMP application
 - 4506T
 - Third Party Letter of Authorization
 - Proposal, including amount of up-front funds
 - Copies of 2 most recent pay stubs
 - Copies of 2 most recent months bank statements
 - Last 2 years of filed tax returns
 - Proof of other household income (Unemployment, SS, child support, etc.)
 - Copies of Utility Bills
 - Proposal, including amount of up-front funds and any interest rate reduction request
 - Financial statement sheet – including monthly budget of income and expenses*
 - Estimated HUD-1 Settlement Statement
 - Listing agreement
 - Agreement of Sale
 - Mortgage Commitment
 - Contact number and consent for bank access appraisal
 - Financial statement sheet – including monthly budget of income and expenses*
 - Other
-

Sample Loan Workouts

Example 1

- *Original loan terms:* \$39,000; 11.95% note rate; mo P&I \$428; PITI \$575
- *Balance at foreclosure:* \$39,500
- *Homeowner:* 80 years old; income \$1,400/mo
- *Settlement terms:* Debt of \$18,000; client had saved \$2,000, so \$16,000; 7.5%; PITI \$248

Example 2

- *Original loan terms:* \$22,500; 12.8% note rate; mo P&I \$374
- *Balance at foreclosure:* \$25,800
- *Homeowner:* 59 years old; income \$900/mo
- *Settlement terms:* Debt of \$21,000; 6.0%; P&I \$150.45

Example 3

- *Original loan terms:* \$27,000; 11.9% note rate; mo P&I \$278
- *Balance at foreclosure:* \$30,600
- *Homeowner:* 72 years old; income \$675/mo
- *Settlement terms:* Debt of \$10,000; 8.0%; P&I \$77.18

Example 4

- *Original loan terms:* \$56,000; 12.9% note rate
- *Balance at foreclosure:* \$68,000
- *Homeowner:* 49 years old; income \$1,100/mo
- *Settlement terms:* Debt of \$50,000; 5.0%

Example 5

- *Original loan terms:* FHA loan, market rate
- *Arrears:* \$5,700 in missed payments and late fees; \$5,122 in fees and costs
- *Settlement terms:* Fees & costs reduced to \$1,500

Appendix D

Consumer Financial Protection Bureau (CFPB)

Servicing Regulations and Official Interpretation

Bureau of Consumer Financial Protection — 12 CFR Chapter X

Part 1024 — Real Estate Settlement Procedures Act (Regulation X)

§ 1024.41 Loss mitigation procedures.

For the Official Board Interpretations applicable to this section, click [HERE](#).

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in section 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in section 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) *Receipt of a loss mitigation application.* (1) *Complete loss mitigation application.* A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(2) *Review of loss mitigation application submission.* (i) *Requirements.* If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Determining Protections.* To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.

(c) *Evaluation of loss mitigation applications.* (1) *Complete loss mitigation application.* If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall:

(i) Evaluate the borrower for all loss mitigation options available to the borrower; and

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) *Incomplete loss mitigation application evaluation.* (i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

(ii) *Reasonable time.* Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application, but a loss mitigation application remains incomplete for a significant period of time under the circumstances without further progress by a borrower to make the loss mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option. Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an

evaluation of an incomplete loss mitigation application. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program offered pursuant to this section. [Note: Added by 9/13/13 final rule.]

(iv) *Facially complete application.* If a borrower submits all the missing documents and information as stated in the notice required pursuant to § 1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the application shall be considered facially complete. If the servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it was facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B).

(d) Denial of loan modification options. If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria. [Note: As amended by 9/13/13 final rule.]

(e) *Borrower response.* (1) *In general.* Subject to paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection.* (i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to

paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) *Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) Prohibition on foreclosure referral. (1) Pre-foreclosure review period. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) A borrower's mortgage loan obligation is more than 120 days delinquent;**
- (ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or**
- (iii) The servicer is joining the foreclosure action of a subordinate lienholder.**

(2) *Application received before foreclosure referral.* If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;
- (ii) The borrower rejects all loss mitigation options offered by the servicer; or
- (iii) The borrower fails to perform under an agreement on a loss mitigation option.

(g) *Prohibition on foreclosure sale.* If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

- (1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested

an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h) *Appeal process.* (1) *Appeal process required for loan modification denials.* If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower pursuant to paragraph (c)(1)(ii) of this section.

(3) *Independent evaluation.* An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application.

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account.

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

Official Interpretations of this section.

Section 1024.41 — Loss mitigation procedures.

41(b) Receipt of a loss mitigation application.

41(b)(1) Complete loss mitigation application.

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options.

2. *When an inquiry or prequalification request becomes an application.* A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any "prequalification" for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.

3. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.

4. Diligence requirements. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. Further, a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes

an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a payment forbearance program based on an incomplete loss mitigation application; the servicer notifies the borrower that he or she is being offered a payment forbearance program based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program, and the borrower does not request further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program. Near the end of the program, and prior to the end of the forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation. [Note: As amended by 9/13/13 final rule.]

5. Information not in the borrower's control. A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.

41(b)(2) Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

Paragraph 41(b)(2)(i)(B).

1. Later discovery of additional information required to evaluate application. Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in § 1024.41(b)(1). See § 1024.41(c)(2)(iv) addressing facially complete applications. [Note: added by 9/13/13 final rule.]

41(b)(2)(ii) Time period disclosure.

1. Reasonable date. Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41 based on the milestones listed below, except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. Generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days. In setting a date, the following milestones should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of the date for which a foreclosure sale may be scheduled):

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale. [Note: added by 9/13/13 final rule.]

41(b)(3) Determining Protections.

1. Foreclosure sale not scheduled. If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.

2. Foreclosure sale re-scheduled. The protections under § 1024.41 that have been determined to apply to a borrower pursuant to § 1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.

41(c) Evaluation of loss mitigation applications.

41(c)(1) Complete loss mitigation application.

1. Definition of "evaluation." The conduct of a servicer's evaluation with respect to any loss mitigation option is in the sole discretion of a servicer. A servicer meets the requirements of § 1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with § 1024.41(a), because nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or provision of, any loss mitigation option, § 1024.41(c)(1) does not require that an evaluation meet any standard other than

the discretion of the servicer.

2. *Loss mitigation options available to a borrower.* The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. Loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

3. *Offer of a non-home retention option.* A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

4. *Other notices.* A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B (12 CFR 1002 et seq.) or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to § 1024.41(d), unless otherwise prohibited by applicable law. [inserted by 9/13/13 final rule.]

41(c)(2) Incomplete loss mitigation application evaluation.

41(c)(2)(i) In general.

1. *Offer of a loss mitigation option without an evaluation of a loss mitigation application.* Nothing in § 1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in § 1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of

the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate § 1024.41(c)(2)(i), and a servicer is not required to comply with § 1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.

2. *Servicer discretion.* Although a review of a borrower's incomplete loss mitigation application is within a servicer's discretion, and is not required by § 1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to § 1024.41.

41(c)(2)(ii) Reasonable time.

1. *Significant period of time.* A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower is less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.

41(c)(2)(iii) Payment forbearance.

1. Short-term payment forbearance program. The exemption in § 1024.41(c)(2)(iii) applies to short-term payment forbearance programs. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

2. Payment forbearance and incomplete applications. Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in § 1024.41, including the obligation in § 1024.41(b)(2) to review the application to determine if it is complete, the obligation in § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)-4.iii), and the obligation to provide the borrower with the § 1024.41(b)(2)(i)(B) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete. [Note: added by

9/13/13 final rule.]

3. Payment forbearance and complete applications. Even if a servicer offers a borrower a payment forbearance program based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all the requirements in § 1024.41 if the borrower completes his or her loss mitigation application. [Note: added by 9/13/13 final rule.]

41(c)(2)(iv) Facially complete application.

1. Reasonable opportunity. Section 1024.41(c)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances. [Note: added by 9/13/13 final rule.]

2. Borrower fails to complete the application. If the borrower fails to complete the application within the timeframe provided under § 1024.41(c)(2)(iv), the application shall be considered incomplete. [Note: added by 9/13/13 final rule.]

41(d) Denial of loan modification options.

1. Investor requirements. If a trial or permanent loan modification option is denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial. A statement that the denial of a loan modification option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient. However, where an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a waterfall) and a borrower has qualified for a particular loan modification option in the ranking established by the owner or assignee, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a ranking and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.

2. Net present value calculation. If a trial or permanent loan modification is denied because of a net present value calculation, the specific reasons in the notice provided to the borrower must include the inputs used in the net present value calculation.

3. Determination not to offer a loan modification option constitutes a denial. A

servicer's determination not to offer a borrower a loan modification available to the borrower constitutes a denial of the borrower for that loan modification option, notwithstanding whether a servicer offers a borrower a different loan modification option or other loss mitigation option.

4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

41(f) Prohibition on foreclosure referral.

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

41(g) Prohibition on foreclosure sale.

1. *Dispositive motion.* The prohibition on a servicer moving for judgment or order of sale

includes making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer that has made any such motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by § 1024.41, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. *Proceeding with the foreclosure process.* Nothing in § 1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before a servicer receives a complete loss mitigation application so long as any such steps in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of § 1024.41.

3. *Interaction with foreclosure counsel.* A servicer is responsible for promptly instructing foreclosure counsel retained by the servicer not to proceed with filing for foreclosure judgment or order of sale, or to conduct a foreclosure sale, in violation of § 1024.41(g) when a servicer has received a complete loss mitigation application, which may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion.

4. *Loss mitigation applications submitted 37 days or less before foreclosure sale.* Although a servicer is not required to comply with the requirements in § 1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v) to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.

Paragraph 41(g)(3).

1. *Short sale listing period.* An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

2. *Short sale agreement.* If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may determine that a borrower has failed to perform under an agreement on a loss mitigation option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties,

including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

41(h) Appeal process.

Paragraph 41(h)(3).

1. *Supervisory personnel.* The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the initial evaluation of the borrower's complete loss mitigation application.

41(i) Duplicative requests.

1. *Servicing transfers.* A transferee servicer is required to comply with the requirements of § 1024.41 regardless of whether a borrower received an evaluation of a complete loss mitigation application from a transferor servicer. Documents and information transferred from a transferor servicer to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause a transferee servicer to be required to comply with the requirements of § 1024.41 with respect to a borrower's mortgage loan account.

2. *Application in process during servicing transfer.* A transferee servicer must obtain documents and information submitted by a borrower in connection with a loss mitigation application during a servicing transfer, consistent with policies and procedures adopted pursuant to § 1024.38. A servicer that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation option is in process should continue the evaluation to the extent practicable. For purposes of § 1024.41(e)(1), 1024.41(f), 1024.41(g), and 1024.41(h), a transferee servicer must consider documents and information received from a transferor servicer that constitute a complete loss mitigation application for the transferee servicer to have been received by the transferee servicer as of the date such documents and information were provided to the transferor servicer.