The Business, Law & Ethics of Mortgage Modifications: Learn How to Legally Navigate in the New Mortgage Resolution Climate

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RICHARD I. RYDSTROM is a recognized national authority on the legal, strategic, and best practices issues affecting policy, business, accounting, mediation or litigation in the residential and commercial mortgage and secondary markets. Mr. Rydstrom was chosen by Chairman Charles Rangel to submit a neutral analysis of the economic and mortgage crisis that was then about to unfold. The 110th Congress, House Ways & Means Committee published Mr. Rydstrom's statement in hearings held by Chairman Charles Rangel on, "The State of the Economy and Challenges Facing the Middle Class, Homeownership & Retirement." He is also the author of one of the first public outreach booklets dealing with mortgage and tax workout solutions, and its 2009-2010 edition titled, ″The 13 Homeowner Solutions to Default & Foreclosure." Mr. Rydstrom is a practicing member of the State Bar of California. He is the creator of numerous solutions to the mortgage and debt crisis facing the nation and the co-founder and chairman of the Coalition for Mortgage Industry Solutions out of DC (CMIS). He is a frequent and nationally known keynote speaker and guest panelist concerning the problems and solutions for the mortgage and secondary market crisis. Mr. Rydstrom was directly involved in redrafts of the HAMP Servicer Guidelines as a member of the Servicers Working Group (AFN, MBA, Hope Now, and Financial Services Roundtable) and directly with Treasury. He has created solutions for all participants, to the mortgage or debt transaction, including the borrower, the court, and the industry. Mr. Rydstrom has created solutions for financing or debt workouts and its related decisioning and processing. He earned his J.D. degree in law, his B.S. degree in public accounting, and his LL.M. degree in taxation.

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The Business, Law & Ethics of Mortgage Modifications: Learn How to Legally Navigate in the New Mortgage Resolution Climate

Presented by the Coalition for Mortgage Industry Solutions
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PROGRAM BOOK & HANDOUTS

The Business, Law & Ethics of Mortgage Modifications: Learn How to Legally Navigate in the New Mortgage Resolution Climate

Drafted & Presented by Richard Ivar Rydstrom (Sections 1-6), and
Cynthia A. Nierer (Section 3), and Presented by Andrew J. Sherman (Section 5)

December 4, 2009

AGENDA

I. Foreclosure or Loan Modification: That is the Question!
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The Business, Law & Ethics of Mortgage Modifications: Learn How to Legally Navigate in the New Mortgage Resolution Climate

Program Book

Narrative & Handouts

Introduction

We will examine the business, law, and ethics of mortgage modifications: and learn how to legally navigate in the new mortgage resolution climate.

The 2009 Overview, State of the Housing Market, and the 2010 Outlook

We are in historic times. This year has proven that change is the only certainty. Changes in the mortgage, banking, and capital markets are numerous, systemic and of philosophical and structural significance. The many changes to date are simply a prelude to the number and scope of changes that are coming. We will continue to see changes in government and proprietary modification and loss mitigation programs, court mediation and proposed court monitor programs, proposals for additional federal, state, and local funding grants and loans that support modifications, foreclosure mediations, and borrower loss of income programs.

On September 9, 2009, Diana Olick (CNBC) reported that there are 1.5 active foreclosures (3% of all US Mortgages) but that 3.5-4million homeowners are also in serious delinquency. Banks may flood the market with REOs. Jumbo Prime are experiencing unusually high default rates: 4.7x average for the 2006 Vintage; 12.1x average for the 2007 Vintage and 7.7 x average for the 2008 Vintage.

On October 8, 2009, Treasury Secretary Barr said a strong housing market was "crucial" to a sustained U.S. economic recovery and noted that analysts say more than six million Americans are at risk of foreclosure in the next three years. "Much more remains to be done and we will continue to work with other agencies, regulators and the private sector to reach as many families as possible," Barr said. (Additional reporting by Tim Ahmann; Editing by Kenneth Barry) (Emphasis added)

With 6-13 million foreclosures expected over the next 5 years (Financial Stability website; Center for Responsible Lending Fact Sheet 9/25/09), 1,400,000 bankruptcies expected by end of 2009 (from January through October, 1,182,362 consumer bankruptcies were filed. ABI projects that the total will rise to 1.4

million by Dec. 31, "the highest number since 2005." *(MortgageDaily.com* Oct. 2 and Oct 4, 2009 (ABI)), unemployment reaching 10.2 percent in October (Dept of Labor), bulging consumer debt loads seriously weakening consumer spending, consumer credit falling 12 billion in August (Federal Reserve), soft home prices continuing with over 33% to 48% or 16 million to 25 million homes "underwater" with negative equity (First American CoreLogic; Deutsche Bank AG, Aug. 5 2009 (Bloomberg), and continuing substantial state court budget shortfalls, the courts and the related foreclosure and bankruptcy systems will continue to face debilitating backlogs not solvable through the current systems and processes.

By the mid to end of 2010 it is estimated that 16-25 million homes (27%-48% of all homeowners with mortgages) will be "underwater" with negative equity. Even as the economy begins to stabilize and recover, strategic defaults, or voluntary foreclosures will keep rising. Major banks are now considering principal reduction techniques to incentivize homeowners to stay and pay. Current government programs and allocated funds ($75b) are specifically designed to avoid this contingency (HAMP limits LTV to 100% when NPV is negative / HARP/H4H limits LTV to 125%). HUD and Congress will be forced to address and institute more broadly defined principal type "cram-downs" to be used to stave-off strategic defaults; in the form of principal reduction/forgiveness modifications and short payoff refinances (H4H). By mid-2010 voluntary foreclosures and principal reduction or forgiveness counter techniques should be common place. In fact, a few major servicers and banks are now testing aggressive principal reduction modifications programs. (See Documents: Bank of America Letter 10/09 _ D1)

Whether negative equity is 33% to 48%, or 16 million to 25 million homes underwater with negative equity, the issue is serious as it can cause or perpetuate additional or continuing defaults or foreclosures, blight, and price declines. To lower re-default rates and to incentivize the borrower's intent to Stay & Pay, *greater monthly cash payment reductions* and *reduced loan balances* (or higher hopes for real equity) must occur. Limitations in the HAMP eligibility or guidelines will limit the number of successful loan workouts, unless principal reduction or forgiveness methods are employed, or more aggressive NON-HAMP loss mitigation methods are instituted. Almost half (50%) of U.S. homeowners with a mortgage owe more then their properties are worth. [Deutsche Bank AG, Aug. 5 (Bloomberg)]. The percentage of "underwater" loans may rise to 48 percent, or 25 million homes, as prices drop through the first quarter of 2011. The percentage of underwater loans may rise to 90% in the fastest appreciation states like California, Florida and Nevada (Karen Weaver, Ying Shen, analysts in New York at Deutsche Bank; Jody Sheen, Bloomberg).

According to the WSJ (Aug. 5, 2009), "Nearly 10% of owner-occupied homes now have mortgage debt with loan-to-value ratios of at least 125%, and roughly half of those homes have mortgage debt with loan-to-value ratios of 150% or more. The rising share of homeowners without equity and the foreclosure crisis continues to be the biggest storm cloud facing any possible economic recovery,

says Mark Zandi, chief economist at Moody's Economy.com. "That such a high proportion of homeowners are underwater is testimony to the severity of the foreclosure crisis and the risk that it still poses to the broader economy," he said. To date, most foreclosure-rescue efforts have focused on lowering monthly payments by reducing interest rates, in part because the housing crisis began with mortgages that were resetting to higher payments. But the looming negative-equity problem could put more pressure on policymakers to come up with a modification plan that includes reducing loan balances, and not just lowering interest rates. "The modification plans that they have in place … will become increasingly ineffective as more homeowners fall deeply underwater," says Mr. Zandi. Unsurprisingly, the negative equity issue remains most severe in the sand states. Some 40% of owner-occupied homes in Nevada are underwater, followed by Arizona (37%), California (33%), and Colorado (31%)."

According to the "Summary of Second Quarter 2009 Negative Equity Data from First American CoreLogic, August 13, 2009, nearly one-third of all mortgages are underwater or more than $3 Trillion of property is at risk of default. The report also indicated that "More than 15.2 million U.S. mortgages, or 32.2 percent of all mortgaged properties, were in negative equity position as of June 30, 2009." By state, the report revealed that California has 2,937,160 in Negative Equity Mortgages (42.0%), and 3,197,670 in Near Negative Equity Mortgages (45.7%). The report summary also stated that:

> The aggregate property value for loans in a negative equity position was $3.4 trillion, which represents the total property value at risk of default. In California, the aggregate value of homes that are in negative equity was $969 billion, followed by Florida ($432 billion), New Jersey ($146 billion), Illinois ($146 billion) and Arizona ($140 billion). Los Angeles had over $310 billion in aggregate property value in a negative equity position, followed by New York ($183 billion), Miami ($152 billion), Washington, DC ($149 billion) and Chicago ($134 billion). (emphasis added)

> The top five states' negative equity share was 47 percent, compared to 25 percent for the remaining states. In numerical terms**,** California (2.9 million) and Florida (2.3 million) had the largest number of negative equity mortgages, accounting for 5.2 million or 35 percent of all negative equity loans. Ohio (862,000), Texas (777,000) and Arizona (706,000) were also ranked among the top five states with the highest number of negative equity loans. "Negative equity continues to be the dominant driver of the mortgage market because it leads to foreclosures in the event a borrower experiences some kind of economic shock such as a job loss, illness or other adverse situation. Given that negative equity did not increase this quarter and home prices declines are moderating or flattening, we may be at the peak of the negative equity cycle. However, until negative equity recedes and unemployment declines, mortgage risk will continue to be very elevated," said Mark Fleming, chief economist for First American CoreLogic.

US consumers are saddled with $2.5 trillion in consumer debt, not including home mortgages (Federal Reserve). Of that, Americans owe $1 trillion on their credit cards. The consumer credit and the commercial mortgage crises which are unfolding upon us now, will compound the current mortgage and housing meltdown. The deleveraging of America is of critical importance not only to banks, non-banks, businesses, and individuals, but to the health and size of the overall economy – going forward. The broader economy is overly dependent upon 'full' employment and sufficient consumer spending. Consumer spending or consumption is critical to both economic and housing recovery - it should be responsible for 71 percent of the U.S. gross domestic product. Consumer spending historically increases some 3.3 percent per year, but personal spending decreased in the second quarter by $195 billion, a 1.9 percent drop. Business and construction spending contracted even more.

If the consumer continues to fail to eat its share of the consumption pie, and we don't replace it with business or government spending, the economy and housing will continue to suffer. The pie will be drastically reduced, and the economy, housing, and the mortgage banking industry will shrink.

Conflicting Laws, Rules, & Guidelines

The laws, rules, regulations, and related program Guidelines are not consistent with fast, efficient and effective resolution of the pending problems. In fact inconsistency and unfairness have yet to be reconciled. For example borrowers are commonly denied mortgage modifications due to excessive back-end consumer debt. Although that decision may be in violation of initial HAMP eligibility rules, it does make good business sense and it will lower re-default rates. However, it violates HAMP rules.

Moreover, if and when borrowers negotiate consumer debt relief, they face events of income taxation, which he/she cannot afford to pay – given their acknowledged financial difficulties.

Laws and program guidelines must effectively address all issues relevant to a mortgage modification resolution including the affect of back-end consumer debt loads as well as consequences of its resolution. Tax laws for example, should allow for relief consistent with the public policy goals of the government mortgage modification and short payoff refinance programs. The lack of comprehensive reconciliation of the related laws, rules, and Guidelines act to frustrate the realization of program goals.

Incentives are not properly aligned or reconciled for all parties necessary to achieve a sustainable mortgage modification or loss mitigation solution. Moreover, the communication process between the borrower and the servicer is inefficient and as many consumer groups complain, unfair to the borrower.

To achieve an effective, efficient, equally fair, and transparent communication and resolution process, all necessary or legally interested parties must be part of the workout process. Included in this process is the Borrowers' representatives such as the borrower's workout attorney, HUD Counselor, Court Mediator, Court Monitor, Voluntary Settlement Officer (VSO), etc. But equally important is the servicers' representatives including its workout representative and an attorney who is not burdened with conflicts such as its foreclosure attorney. However, in addition to the necessary parties, the necessary information and documents must be equally available and such information must be decisioned for program eligibility and available workout options prior to making offers to the borrower or any court (final) hearings. Judges, and all parties to the workout, should be afforded a neutral and acceptable analysis of workout options on each case prior to ruling on the merits relating to eligibility or potential workout options. This would save time and money and yield a more equally fair administration of justice and government program compliance.

Modifications Got Off To a Slow Start

Modification got off to slow start even after the Bush and Obama administrations made it a public policy issue. Pursuant to the Moody's Structured Finance Special Report of September 21, 2007, only 1% of reset loans were modified in the months of January, April and July 2007 (See Program Documents Moody's Subprime Mortgage Servicer Survey on Loan Modifications).

Many restrictions precluded the loan modification from taking-hold. Most Pooling & Servicing Agreements (P&S) allow for modifications, however, many contain restrictions that preclude or limit same. Changes in the American Securitization Forum (ASF) Guidelines dated June and December 2007 (See Program Documents) attempted to define and allow modifications without violations of the P&S, and the REMIC/Trust regulations. The Hope Now Mortgage Servicer Guidelines of June 9, 2008 (See Program Documents) also paved the way for further use of modifications. However, as of June 2008 the use of modifications was still not wide-spread. At that time, most loss mitigation efforts took the form of a forbearance or repayment plan resulting in unaffordable monthly borrower payments and high re-default rates. However, changes in the tax regulations in 2008 and 2009 including IRC Section 860 et seq. cleared the way for wide spread use of the residential modification (See Program Documents Rydstrom Article: Mortgage Modification Safe-Harbors? HAMP, Are We There Yet? _ D2) and only recently for the commercial modifications (See Program Documents Rydstrom Article New Final Regulations Resolve Open Issues for Modifications of Commercial Mortgages Held by REMICs – But Modifications Held by Investment Trusts Remain Unanswered Pending Comments [TD 9463, Rev. Proc. 2009-45, Notice 2009-79] _ D3)

To have a successful modification or refinance program it must rest in consonance with the IRS. Back in April 2009, the Treasury issued IRS Notice

2009-36 and Rev. Proc. 2009-23 in full support of the recently enacted new HAMP (*Home Affordable Modification Program)*. It was necessary to reach an objective tax safe-harbor for REMICS and Trusts before true homeowner affordability with mortgage loan modifications could be reached. Business or investor machines such as banks, lenders, servicers, REMICS and mortgage pool trusts will not, and cannot effectuate en mass modifications (or short refinances) if it will violate contracts and tax regulations which penalize its interests severely in terms of taxation and litigation for doing so.

IRC Section 860G(d)(1) states that, except as provided in section 860G(d)(2), "if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution." Notice 2009-36 is clear in its intent to save the REMIC from adverse consequences as it clearly states: If a payment is made to a REMIC under the HAMP, if the payment is described in section 860G(d)(1), and if the payment is not covered by any of the exceptions in section 860G(d)(2), then regulations to be issued by the Service and Treasury will provide an exception for that payment…Pending the issuance of further guidance, taxpayers may rely on this Notice and, accordingly, any payment made to a REMIC under the HAMP will not be subject to the 100 percent tax set forth in section 860G(d)(1).

Let's examine the business, law, and ethics of mortgage modifications, and learn how to legally navigate in the new mortgage resolution climate. Our first topic is:

Section 1 - Foreclosure or Loan Modification: That is the Question!

With the implementation of the new laws and Guidelines starting from HR 3221 (July 2008) and the new HAMP rules under Making Home Affordable (MHA) (including its March 4, 2009 HAMP Guidelines and the series of recent Supplemental Directives including 09-01 to 09-08), the question has been and generally remains, *whether a loan modification or foreclosure would yield a more beneficial net present value (NPV) for the investor*. Pursuant to HAMP, if the Net Present Value (NPV) of the loan as modified is positive, the modification is required. If the NPV is negative, it is within the discretion of the servicer (or investor) but principal reduction is limited to 100% LTV. See the NPV section below.

Loss Mitigation Options Generally

As of November 2009, loss mitigation options are generally based in mandates set by law and the rules or guidelines that implement same, investor restrictions usually found in related Pooling & Servicing Agreements (P&S), and business judgment exercised by the Servicer who is burdened with multiple inherent conflicts and misaligned incentives. Servicers should realize that the new laws (rules and guidelines) have potentially enhanced its inherent conflicts and duties

owed to all participants of the workout transaction. For example, a borrower with excessive debt is likely to re-default causing greater losses to all other participants, however, HAMP rules require initial approval of a borrower with greater than 31% front-end DTI (debt to income), regardless of his/her excessive back-end debt. Suspension of foreclosure procedures are required upon initial HAMP eligibility. However, Servicers desire to fulfill its duties to the investors and avoid unnecessary losses and delays in the foreclosure (recovery) process.

Generally the options were divided between two concepts commonly referred to as: Stay & Pay or Sell & Move. However, as of 11/5/09, Fannie Mae officially created a new category called: Deed for Lease (D4L). Now we generally have three (3) categories:

1) Stay & Pay

2) Sell & Move

3) Sell & Lease

The **Hope Now** organization publishes on its website the following outline of loss mitigation options as of November 2009 for public reference and states therein: "* This information is provided as an example of the loss mitigation assistance which may be provided by mortgage companies, and should not be considered an offer or promise of these services:

Option	How Does the Option Work?	Key Benefits
Repayment Plan	Distributes your delinquent payments over a period of time, usually no more than 10 months. A portion of the deferred delinquent amount is added to the normal monthly mortgage payment.	» Brings your account up to date within a specified time-frame. » With a goal in sight, you can move forward knowing that your mortgage loan is secure.
Loan Modification	A permanent change in one or more of the terms of the mortgage loan, allowing the loan to be reinstated to a "current" status, and resulting in a more affordable monthly mortgage loan payment. *Past due interest and escrow are added to the new unpaid principal balance and re-amortized over the remaining life of the loan*.	» Changes the mortgage note itself, giving you a "fresh" start on managing your mortgage loan. » Brings your account up to date immediately once the loan

		modification is executed.
Partial Claim (only for FHA loans)	A second mortgage, interest free, that is paid off at the time when the homeowner's loan is paid off. This option allows up to 12 months of past due accrued mortgage payments to be included in the second mortgage. Available only on FHA loans.	» HUD loan is interest-free. » Brings your account up to date immediately.
Fannie Mae HomeSaver Advance™ (FNMA Only)	A low interest rate loan provided by the first lien loan servicer to bring current a customer's delinquent first lien loan. The loan repaid over a 15 year term, with payment and interest accrual deferral during the first 6 months after the advance. Available only on most Fannie Mae loans.	» Brings your account up to date immediately. » Second mortgage is secured at a low interest rate.
Home Affordable Modification Program (HMP)	Goal of HMP: Help the most at-risk borrowers in default and those that are at risk of imminent default stay in their homes through a modification process to establish an affordable monthly housing payment. The goal is to reach a monthly housing payment (which includes capitalized past due payments, principal, interest, taxes, insurance and HOA/condo fees) that is no more than 31% of the borrower(s) total monthly gross household income. How HMP Works: Participating servicers and investors will work with eligible qualified borrowers to reach a more affordable mortgage payment through extending the term of the loan, lowering the interest rate, capitalizing delinquent mortgage payments, *and/or forbearing principal.* All outstanding late fees are waived. Eligible Borrowers: Borrowers that are past due on first mortgage or are in imminent default, can be in foreclosure, own and occupy the property, and the property is a single family residence (1 -4 unit property, one unit of which is the borrower's principle residence). Cooperative share mortgages and mortgage loans secured by condominiums and	» Changes the mortgage note itself, giving you a "fresh" start on managing your mortgage loan. » Brings your account up to date immediately once the loan modification is executed.

manufactured homes are eligible for HMP. First mortgages are only eligible for this program. The program will sunset on December 31, 2012, and first mortgage loans must have been originated prior to January 1, 2009. Borrower(s) may only modify one (1) time under the HMP program. First Mortgage Loan Limits: First lien mortgage loans must have an unpaid principle balance (prior to capitalization for arrearages) equal to or less than the following:

1 unit property will be $729,750 regardless of property location
2 units: $934,200 regardless of property location
3 units: $1,129,250 regardless of property location
4 units: $1,403,400 regardless of property location

LTV: N/A to HMP qualification process. Mandatory Escrow: Escrows for real estate taxes and homeowners' insurance must be set up under this program if they are not currently escrowed. Required Documentation for Qualification Review: A signed hardship statement, verification of monthly gross household income (2 most recent pay stubs, most recent tax return, and signed IRS form 4506-T), and expense documentation as needed. 3 - 4 Month Trial Modification Requirement: For modification to be complete, if borrower is delinquent prior to modification, they must make 3 payments within 90 days at the new modified payment level and be current at day 90. If the borrower is current at the time of modification, the borrower must make 4 payments within 120 days at the new modified payment level and be current at 120 days. Borrower Incentive: Borrower(s) are eligible to receive
Pay-for-Performance Success that goes

	towards reducing principal of $1,000 each year for (5) five years if they stay current on their mortgage loan. Counseling Requirement: If the borrower has a back-end ratio (borrower total monthly debt ratio) equal to or greater than 55%, HUD approved housing counseling is required. Servicers are required to send a letter to applicable borrowers regarding the counseling requirement. The borrower must acknowledge in writing that s(he) will obtain such counseling at HUD-approved housing counseling agencies. Borrowers can receive free counseling by calling the Homeowner's HOPE Hotline™, 888-995-HOPE™ or visit www.hud.gov to find a housing counselor in their area. For more information about the Home Affordable Modification Program, please visit www.financialstability.gov. Note: The Streamlined Modification Program (SMP) and the Early Workout™ Program expired in March 2009.	
Short Sale	Allows you to sell your home and use the proceeds to pay off the mortgage if you are unable to maintain payments, even if the home's market value is less than the total amount owed. For more details, click here.	» Avoids the lengthy legal process involved in foreclosure. » Typically less damaging to your credit rating than foreclosure.
Deed in Lieu of Foreclosure	Allows you to voluntarily transfer legal ownership of your property to your investor if you are unable to maintain mortgage payments and cannot sell the home at current market value. For more details, click here.	» Avoids the lengthy legal process involved in foreclosure. » May be less damaging to your credit rating than foreclosure.

1) STAY & PAY Devices with HUD References:

Forbearance – This is a temporary solution. HUD Outreach (5/01 Bulletin) states: Special Forbearance. Your lender may be able to arrange a repayment plan based on your financial situation and may even provide for a temporary reduction or suspension of your payments. You may qualify for this if you have recently experienced a reduction in income or an increase in living expenses.

You must furnish information to your lender to show that you would be able to meet the requirements of the new payment plan. Allows for short period of time to cure a temporary financial impairment. *The lender will require proof or a probably plan to cure the temporary hardship and revive the ability to pay*.

Repayment plan – This maybe temporary or long term solution depending upon the affordability of the plan and borrower's ability to pay. Your lender may agree to a plan that includes your regular monthly payments plus a portion of the past due payments each month until your payments are caught up.

Loan modification. This is intended to be a long term solution. HUD Outreach (5/01 Bulletin) states: Mortgage Modification. You may be able to refinance the debt and/or extend the term of your mortgage loan. This may help you catch up by reducing the monthly payments to a more affordable level. You may qualify if you have recovered from a financial problem and can afford the new payment amount. *However, as of November 2009, generally we have HAMP, FHA-HAMP, Fannie-HAMP, Freddie-HAMP and NON-HAMP modification programs (See below).*

Partial claim. HUD Outreach (5/01 Bulletin) states: Partial Claim. Your lender may be able to work with you to obtain a one-time payment from the FHA-Insurance fund to bring your mortgage current. You may qualify if: 1. your loan is at least 4 months delinquent but no more than 12 months delinquent; 2. you are able to begin making full mortgage payments. When your lender files a Partial Claim, the U.S. Department of Housing and Urban Development will pay your lender the amount necessary to bring your mortgage current. You must execute a Promissory Note, and a Lien will be placed on your property until the Promissory Note is paid in full. The Promissory Note is interest-free and is due when you pay off the first mortgage or when you sell the property.

Reinstatement: Lenders are often willing to "reinstate" your loan if you make up the back payments in a lump sum by a specific date. A forbearance plan may accompany this option.

Assumption – Co-Borrower: This would allow the borrower to add a qualified co-borrower to the note, and allow the original borrower to stay in the home. A qualified buyer may be allowed to assume (take over) your mortgage.

2) Sell & Move Devices with HUD References:

Short Sale: Allows the property to be sold for any amount less then the amount due on the loan. Income taxes may be due on the difference between the amount owed and the amount realized from the sale. (See herein Income Taxation). **HUD Outreach (5/01 Bulletin) states: Pre-foreclosure sale.** This will allow you to avoid foreclosure by selling your property for an amount less than the amount necessary to pay off your mortgage loan. You may qualify if: 1. the loan is at least 2 months delinquent; 2. you are able to sell your house within 3 to 5

months; and 3. a new appraisal (that your lender will obtain) shows that the value of your home meets HUD program guidelines.

Sale/Pre-Foreclosure Sale: This would allow the borrower to list the property for sale over a specific amount of time and pay off the amount owed on your mortgage.

Assumption – New Buyer: A qualified buyer may be allowed to assume (take over) the mortgage (and title) with the original borrower moving out.

Deed-in-lieu of foreclosure: This would allow the borrower to "give back" the property to the lender, who forgives the balance of the loan. There may be income tax consequences. This option may be less damaging to the borrower's credit rating. **HUD Outreach (5/01 Bulletin) states: Deed-in-lieu of foreclosure.** As a last resort, you may be able to voluntarily "give back" your property to the lender. This won't save your house, but it is not as damaging to your credit rating as a foreclosure. You can qualify if: 1. you are in default and don't qualify for any of the other options; 2. your attempts at selling the house before foreclosure were unsuccessful; and 3. you don't have another FHA mortgage in default.

3) Sell & Lease – New 11/5/09 Fannie Mae Deed for Lease Program

Lenders/Servicers may allow the borrower to transfer the title of the property to the lender but stay and pay as a tenant. On 11/5/09, Fannie Mae officially created a new category called: **Deed for Lease (D4L)**.

Fannie Mae's "Announcement 09-33" introduced the Deed-for-Lease™ program (See Program Documents Announcement 09-33 __D4), as "a new option for qualified borrowers facing foreclosure (or their tenants) to remain in their home by signing a lease in connection with the voluntary transfer of the property to the lender through a deed-in-lieu of foreclosure transaction."

The Fannie Deed-for-Lease™ program is a program designed to minimize family displacement, deterioration of neighborhoods caused by vandalism and theft to vacant homes, and the effect these have on families, communities and home price stabilization. D4L allows qualifying borrowers of properties transferred through deed-in-lieu of foreclosure (DIL) to remain in their home and community by executing a lease of up to 12 months in conjunction with a DIL. Investment properties that are tenant-occupied may also be considered as long as the borrower is cooperative in providing information from the tenant to facilitate the D4L. (More Fannie Mae Info See: https://www.efanniemae.com/sf/servicing/d4l) (See

Program Documents: Fannie Mae Deed for Lease™ (D4L) – Frequently Asked Questions__D5)

SPECIAL NOTE RE DIL: DIL's can be a two edged sword. There are advantages and disadvantages, all with risks. It may be useful to obtain mutual waivers (of lender liability and borrower deficiency liability), but new laws (HAMP) may require preclude that a borrower waive any rights in reaching a resolution under certain programs like HAMP. *This may be a good reason for the borrower to be represented by his/her counsel of choice*. HAMP would require that a modification 1st be evaluated and offered if eligible. Assuming there is no alternative solution under any required laws, rules, or programs, and then a DIL may be appropriate. A DIL is a bargained for resolution agreement, and may be favorable to the borrower in if it is not reported on his/her credit. Danger lurks with respect to a lender extinguishing the lender's mortgage interest under the doctrine of common law merger. The agreements must expressly declare that there is no intent of merger. The agreement should document that it was a voluntary transaction, which is why it may not be advisable to run foreclosure parallel which may allow a borrower to claim coercion from the pending foreclosure proceedings. The lender would want to avoid evidence of a continuing security interest creating an equitable mortgage. See Fannie Mae's DIL program which requires DIL compliance in its new D4L lease back program.

Other: Short (Payoff) Refinance – Home Affordable Refinance Program (HARP), H4H, HR 3221, and its amendments and recent efforts by FHA/HUD, continue to broaden eligibility of for refinance programs. Efforts are underway to broaden the scope of troubled and pre-troubled borrowers into programs that would result in more affordable monthly payments through refinancing or refinancing with principal reductions/forgiveness. Declining property values and generally lower FICO scores are precluding many borrowers from eligibility. As of the date of this draft, pending new proposals were not yet announced. See below for HARP discussion. Updates will be offered on subsequent programs or website updates. Check online at: (www.CMISMortgageCoalition.org).

UPDATES: SHORT SALES, DILs & CRAM-DOWNS - On October 9 the Congressional Oversight Panel (COP) issued a report noting the ineffectiveness of HAMP. Lawmakers are promising to revisit the mortgage (bankruptcy) cram-down legislation. On October 22, Herbert Allison, the Treasury Department's Assistant Treasury Secretary for Financial Stability, told the COP that the Administration will visit additional legislation for foreclosure alternatives including government incentives for servicers to process ***short sales and deeds-in-lieu (DIL)*** intended for borrowers who will not qualify for loan workouts under HAMP.

Loss Mitigation Document Examples:

A. Loan Modifications –
Mod Agreement - (See Program Documents K_Mod __D6)

B. Principal Reduction Offer -
(See Program Documents Bank of America Offer Letter __D1)
C. Forbearance (See Program Documents K_Forbearance __D6)
D. Security Retention Agreement (See Program Documents K_Security Retention K __D6)

Reference - Income Taxation
Home Foreclosure and Debt Cancellation –

Update Dec. 11, 2008 — The Mortgage Forgiveness Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualify for this relief. This provision applies to debt forgiven in calendar years 2007 through 2012. Up to $2 million of forgiven debt is eligible for this exclusion ($1 million if married filing separately). The exclusion doesn't apply if the discharge is due to services performed for the lender or any other reason not directly related to a decline in the home's value or the taxpayer's financial condition. The amount excluded reduces the taxpayer's cost basis in the home. More details. Further information, including detailed examples, can also be found in Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments. Forgiveness of debt does not always result in taxation. There are some exceptions. According to IRS Pub 4682, Tax Form 982, and IRS Publication 544, the most common situations are when cancellation of debt income is not taxable involve:

Bankruptcy: Debts discharged through bankruptcy are not considered taxable income.

Insolvency: If you are insolvent when the debt is cancelled, some or all of the cancelled debt may not be taxable to you.You are insolvent when your total debts are more than the fair market value of your total assets.Insolvency can be fairly complex to determine and the assistance of a tax professional is recommended if you believe you qualify for this exception.

Certain farm debts: If you incurred the debt directly in operation of a farm, more than half your income from the prior three years was from farming, and the loan was owed to a person or agency regularly engaged in lending, your cancelled debt is generally not considered taxable income.The rules applicable to farmers are complex and the assistance of a tax professional is recommended if you believe you qualify for this exception.

Non-recourse loans: A non-recourse loan is a loan for which the lender's only remedy in case of default is to repossess the property being financed or used as collateral.That is, the lender cannot pursue you personally in

case of default. *Forgiveness of a non-recourse loan resulting from a foreclosure does not result in cancellation of debt income*.

For other IRS related tax references, see:
Publication 523, Selling Your Home
Publication 544, Sales and Other Dispositions of Assets
Publication 908, Bankruptcy Tax Guide
Form 1040, U.S. Individual Income Tax Return
Form 1040, Schedule D, Capital Gains and Losses
Form 1099-C, Cancellation of Debt; Form 9465, Installment Agreement Request

IRS Insolvency Worksheet

Insolvency Worksheet—John and Mary Elm

Keep for Your Records

Date debt was canceled (mm/dd/yy)		**03/01/08**
Part I. Total liabilities immediately before the cancellation (do not include the same liability in more than one category)		
	Liabilities (debts)	**Amount Owed Immediately Before the Cancellation**
1.	Credit card debt	**$ 5,500**
2.	Mortgage(s) on real property (including first and second mortgages and home equity loans) (mortgage(s) can be on personal residence, any additional residence, or property held for investment or used in a trade or business)	**$ 315,000**
3.	Car and other vehicle loans	$
4.	Medical bills	$
5.	Student loans	$
6.	Accrued or past-due mortgage interest	$
7.	Accrued or past-due real estate taxes	$
8.	Accrued or past-due utilities (water, gas, electric)	$
9.	Accrued or past-due child care costs	$
10.	Federal or state income taxes remaining due (for prior tax years)	$
11.	Loans from 401(k) accounts and other retirement plans	$
12.	Loans against life insurance policies	$
13.	Judgments	$
14.	Business debts (including those owed as a sole proprietor or partner)	$
15.	Margin debt on stocks and other debt to purchase or secured by investment assets other than real property	$
16.	Other liabilities (debts) not included above	$
17.	**Total liabilities immediately before the cancellation. Add lines 1 through 16.**	**$ 320,500**
Part II. Fair market value (FMV) of assets owned immediately before the cancellation (do not include the FMV of the same asset in more than one category)		
	Assets	**FMV Immediately Before the Cancellation**
18.	Cash and bank account balances	**$ 6,000**
19.	Residences (including the value of land) (can be personal residence, any additional residence, or property held for investment or used in a trade or business)	**$ 290,000**
20.	Cars and other vehicles	$
21.	Computers	$
22.	Household goods and furnishings (for example, appliances, electronics, furniture, etc.)	$
23.	Tools	$
24.	Jewelry	$
25.	Clothing	$
26.	Books	$
27.	Stocks and bonds	$
28.	Investments in coins, stamps, paintings, or other collectibles	$
29.	Firearms, sports, photographic, and other hobby equipment	$
30.	Interest in retirement accounts (IRA accounts, 401(k) accounts, and other retirement accounts)	**$ 13,000**
31.	Interest in a pension plan	$
32.	Interest in education accounts	$
33.	Cash value of life insurance	$
34.	Security deposits with landlords, utilities, and others	$
35.	Interests in partnerships	$
36.	Value of investment in a business	$
37.	Other investments (for example, annuity contracts, guaranteed investment contracts, mutual funds, commodity accounts, interest in hedge funds, and options)	$
38.	Other assets not included above	$
39.	**FMV of total assets immediately before the cancellation. Add lines 18 through 38.**	**$ 309,000**
Part III. Insolvency		
40.	**Amount of Insolvency.** Subtract line 39 from line 17. If zero or less, you are not insolvent.	**$ 11,500**

Section II - New *Required* Government Mortgage Workout Programs

New Laws re Mortgages, Mortgage Workouts, Modification, and Refinance:

HAMP UPDATE: 11/10/09

Press Releases

Updated: November 10, 2009

For Immediate Release: November 10, 2009
Contact: Office of Public Affairs, (202) 622-2960

Obama Adminstration Releases New Data on Making Home Affordable Program, Incldues State-Specific Modifications to Date

WASHINGTON – Today, the Obama Administration released the next monthly report for the Making Home Affordable (MHA) loan modification program. As part of an ongoing commitment to transparency, the report includes for the first time state-specific trial modification numbers. With more than 650,000 modifications under way across the country, the program is on track to meet its goals over the next several years.

"As this report demonstrates, struggling homeowners in every state now benefit from reduced monthly mortgage payments and have an opportunity to stay in their homes," said Treasury Assistant Secretary Michael S. Barr. "The program is having a pronounced impact in areas particularly hard hit by the housing crisis. We're reaching borrowers at a larger scale than any other modification program to date, but there is still much more work to be done." See: http://www.financialstability.gov/latest/tg_11102009.html

Select Laws: Overview:

HR 1:

H.R. 1, the "American Recovery and Reinvestment Act of 2009 was signed by the President on February 17, 2009. The bill is a $780 billion package, with roughly 35% of the package devoted to tax cuts (mostly for 2009) and the rest to spending intended to occur in 2009 and 2010. The bill provides for a $8,000 tax credit that would be available to first-time home buyers for the purchase of a principal residence on or after January 1, 2009 and before December 1, 2009. FHA, Fannie Mae and Freddie Mac Loan Limits - H.R. 1 reinstates last year's 2008 loan limits for FHA, Freddie Mac, and Fannie Mae loans. These limits were equal to the greater of 125% of the 2008 local area median home price or $271,050 for FHA and $417,000 for Fannie and Freddie, with an overall maximum cap of $729,750. H.R. 2996 was signed into law on October 31 and

provides a one-year extension of the current loan limits for the Federal Housing Administration, Fannie Mae, and Freddie Mac.

On November 5, 2009, The President signed H.R. 3548 extending the *$8,000* First Time Homebuyers Tax Credit, and adding a *$6,500* Credit for Homeowners relocating who lived in their home for at least 5 years.

HR 3221 & S. 896

HR 3221 was signed into law by President Busy on July 30, 2008. Other titles in this law include:

-- Building American Homeownership Act of 2008
-- Federal Housing Finance Regulatory Reform Act of 2008
-- FHA Manufactured Housing Loan Modernization Act of 2008
-- FHA Modernization Act of 2008
-- Foreclosure Prevention Act of 2008
-- **HOPE for Homeowners Act of 2008**
-- Housing Assistance Tax Act of 2008
-- Housing Tax Credit Coordination Act of 2008
-- Mortgage Disclosure Improvement Act of 2008
-- S.A.F.E. Mortgage Licensing Act of 2008
-- Secure and Fair Enforcement for Mortgage Licensing Act of 2008
-- Small Public Housing Authorities Paperwork Reduction Act

H.R. 3221: Housing and Economic Recovery Act of 2008, imposes a duty on servicers to maximize net present value for the securitization vehicle (investors' interests). Additionally H.R. 3221: Housing and Economic Recovery Act of 2008, addresses this problem and supports as 'public policy' increased securitization as follows: (1) securitization of mortgages by the enterprises (GSEs) plays an important role in providing liquidity to the U.S. housing markets; and (2) Congress encourages them to securitize mortgages acquired under the increased conforming loan limits established by this Act.

Senate bill (S. 896) revamped the previously passed $300 billion FHA Hope for Homeowners (H4H) program…" Both bills include a "safe harbor" provision that gives servicers a green light to modify loans, if they "believe in good faith" the recovery from a modification will exceed that of a foreclosure."

HR 3221, known as the HOPE Program (Housing and Economic Recovery Act of 2008) was signed by President Bush on July 30, 2008 making $300 billion in FHA loan insurance guarantees available for distressed borrowers to refinance into lower-cost, fixed rate, government-insured mortgages. In return lenders would have to reduce the loan principal, and homeowners would share with the government any profit when the house is sold. The program is voluntary (Section 257(e)(4)(c)) requiring Note Holders to accept principal forgiveness, including an

FHA insurance fee. The initial plan failed to find support and fell short of initial expectations.

The new laws (HR 1424 and HR 3221) only added to the uncertainty as 1424 infused a duty or interpretation based on the net present value to the taxpayer (Section 110), and 3221 set out to limit the conflicting duty burdens on servicers by attempting to lessen the inherent investor tranche conflicts with a supplement or explanation (or Federal interpretation) of the duty owed to any particular investor, with a duty to all investors (129A).

> SEC. 1403. FIDUCIARY DUTY OF SERVICERS OF POOLED RESIDENTIAL MORTGAGE LOANS. The Truth in Lending Act (15 U.S.C. 1601 et seq.) was amended by inserting after section 129 the following new section: ''SEC. 129A. FIDUCIARY DUTY OF SERVICERS OF POOLED RESIDENTIAL MORTGAGES. ''(a) IN GENERAL.—Except as may be established in any investment contract between a servicer of pooled residential mortgages and an investor, a servicer of pooled residential mortgages— *''(1) owes any duty to maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest in such investment, not to any individual party or group of parties*; and *''(2) shall be deemed to act in the best interests of all such investors and parties if the servicer agrees to or implements a modification or workout plan, including any modification or refinancing undertaken pursuant to the HOPE for Homeowners Act of 2008*, for a residential mortgage or a class of residential mortgages that constitute a part or all of the pooled mortgages in such investment, provided that any mortgage so modified meets the following criteria: ''(A) Default on the payment of such mortgage has occurred or is reasonably foreseeable. ''(B) The property securing such mortgage is occupied by the mortgagor of such mortgage. ''(C) The anticipated recovery on the principal outstanding obligation of the mortgage under the modification or workout plan exceeds, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure. ''(b) DEFINITION.—As used in this section, the term 'servicer' means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).''

Unfavorable Write-Downs: This was not widely received as beneficial to the lenders/holders. Voluntary participation in the 3221 FHA refinance program required the lender or holders to take write-downs and losses when it "forgives" debt by entering into the principal reduction modification. This was not a favorable event for the industry, or the economy, as more write-downs cause more capital and covenant impairments, resulting in loss of lending capacity, or worse, more failed going-concerns.

Increased Litigation Risks: Moreover, participation in the 3221 short payoff refinance program, enhanced the uncertainty of increased lawsuit claims from investors (in certain tranches) if the result of participation violated the express contract duties, to act in the best interest of the investor (under its pooling and servicing agreement). Although, 3221 respected the sanctity of contract by qualifying its new duty with: "Except as may be established in any investment

contract ", it goes on to state: "…a servicer of pooled residential mortgages— ''(1) owes any duty to maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest in such investment, not to any individual party or group of parties; and ''(2) shall be deemed to act in the best interests of all such investors and parties…"

3221 went on to define the test of how to determine if the duties are satisfied, as follows:

> ''(C) The anticipated recovery on the principal outstanding obligation of the mortgage under the modification (H. R. 3221—157) or workout plan exceeds, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure."

Some would argue that **Section 129A** did not create a fiduciary duty or a duty at all, and that this section only contemplates an interpretation of private contractual provisions. Since, the law expressly respects the sanctity of contract, the standards set in 3221 does not appear to provide the servicer optional contractual duties or protections, but it does supply standards of interpretation and protection if same are not clearly defined or preempted by a certain pooling and servicing contract.

TITLE IV OF H.R. 3221 – HOPE FOR HOMEOWNERS PROGRAM (PRESIDENT BUSH SIGNED 7/30/08)

> **Title IV - HOPE for Homeowners –**
> HOPE for Homeowners Act of 2008 -
> **Section 1402 -**
> Amends the National Housing Act (NHA) to establish the HOPE for Homeowners Program in the Federal Housing Administration (FHA). Authorizes the Secretary of Housing and Urban Development (HUD) under the Program to insure eligible mortgages that have been refinanced in accordance with specified requirements. Instructs the Board of Directors of the Program to study and report to Congress on the need for an auction or bulk refinancing mechanism to facilitate refinancing existing residential mortgages at risk for foreclosure into mortgages that are insured under this Act. Establishes in the FHA the Home Ownership Preservation Entity Fund (HOPE) to implement mortgage insurance obligations. Limits the aggregate original principal obligation of all mortgages insured under this Act to $300 billion. Requires HUD to ensure that securities based upon and backed by a trust or pool of mortgages insured under this Act are available to be guaranteed by the Government National Mortgage Association (GNMA) for timely payment of principal and interest. Authorizes GNMA to make such guarantees. Terminates HUD's authority to insure such refinanced mortgages as of September 30, 2011. Instructs the Secretary of the Treasury to issue HOPE Bonds to pay for the net federal Program costs.

Section 1403 –

Amends the Truth in Lending Act to impose a fiduciary duty upon servicers of pooled residential mortgages. Declares that a servicer of pooled residential mortgages: (1) owes any duty to maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest in such investment, not to any individual party or group of parties; and (2) shall be deemed to act in the best interests of all such investors and parties if the servicer agrees to or implements a modification or workout plan, including any modification or refinancing undertaken pursuant to the HOPE for Homeowners Act of 2008, for a residential mortgage or a class of residential mortgages that constitute a part or all of the pooled mortgages in such investment, provided that any mortgage so modified meets specified criteria.

Section 1404 -
Amends the National Housing Act (NHA) to require FHA appraisers to: (1) be certified by the state in which the property to be appraised is located, or by a nationally recognized professional appraisal organization; and (2) have demonstrated verifiable education in FHA appraisal requirements.

Requirements of Insured Mortgages under new Section 257 of the National Housing Act:

Sec. 257(e) – All of the following requirements must be met:
Lack of capacity to pay existing mortgage: borrowers certify that they have not intentionally defaulted on the eligible mortgage or on any other debt (false statement = fine and/or 5 years in prison); mortgagor agrees in writing that the mortgagor shall be liable to repay the FHA any direct financial benefit received as a result of misrepresentations made in the certifications and documentation requirements. DTI ratio > 31% as of 03/01/2008 (or such higher amount as the Board may determine).
Required waiver of all prepayment penalties and fees.
Principal obligation amount to be insured not to exceed 90% of the appraised value of the property, and must be determined by the reasonable ability of the borrower to make the mortgage payments as determined by the Secretary or by any other underwriting standards established by the Board.
Extinguishment of all subordinate liens on the property. All holders of the outstanding mortgage agree to accept the proceeds of the insured loan as payment in full, and all encumbrances are removed. The Board may establish standards for, and the Secretary may take action, as may be necessary and appropriate to facilitate coordination and agreement between holders of the existing senior and subordinate mortgage. Also, permits second lien holders to share in FHA's portion of shared appreciation in the property secured by the eligible mortgage, pursuant to policies and standards established by the Board.
Prohibition on second liens: borrowers are prohibited from taking out new second liens on the property for the first five years of the mortgage, except as the Board determines to be necessary to ensure the maintenance of property standards; and provided that such new outstanding liens (A) do not reduce the value of the Government's equity in the borrower's home; and (B) when

combined with the mortgagor's existing indebtedness, do not exceed 95% of the home's appraised value at the time of the new second lien.

Equity and Appreciation (Sec. 257(k)) – requires borrowers to share equity and any future appreciation in the value of the property with the Federal Government through the following: (1) the Secretary and borrower share equity created from any sale or disposition or subsequent refinancing according to a 5-year phase-in schedule; (2) upon sale or disposition of the property, any appreciationin the value of the property must be shared equally between the Secretary and the borrower.

Documentation and verification of income required through income tax return transcript or copy of tax returns.

Term of mortgage: 30-year, fixed-rate.

Maximum loan limit = 132% of the dollar amount limitation in effect for 2007 under the FHLMC Act.

The mortgagor shall not have been convicted under any provision of Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

Primary residence: the mortgagor shall provide documentation satisfactory to prove that the residence covered by the mortgage is occupied by the mortgagor as the primary residence, and that such residence is the only residence in which the mortgagor has a present ownership interest.

Appraisals must be based on the current value of the property and meet standard appraiser requirements.

Division B - Foreclosure Prevention

Foreclosure Prevention Act of 2008 - Designates all provisions of this Division as emergency requirements necessary to meet emergency needs pursuant to FY2008 budget resolution.

Title I - FHA Modernization Act of 2008

FHA Modernization Act of 2008 –

Subtitle A - Building American Homeownership

Building American Homeownership Act of 2008 –

Section 2112 –

Amends the National Housing Act to modify requirements for the maximum principal loan obligation: (1) changing one element in the formula from 95% to 100% of the median one-family house price in the area; and (2) increasing other percentages in the formula. Limits the principal loan obligation to 100% of the appraised value of the property. Prohibits any increase in the maximum amount of a mortgage by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Section 2113 –

Amends the National Housing Act to revise eligibility criteria for cash down payment for Federal Housing Administration (FHA) mortgage insurance.

Increases such payment from the current 3% to 3.5% of the appraised value of the property. Repeals the authority of corporations or other persons to pay the down payment for: (1) individuals at age 60 or older at the time the mortgage was endorsed for insurance or if the mortgage met the requirement for single-family housing in outlying areas; or (2) covering a single-family home being purchased under the low-income housing demonstration project or a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act. Requires the Secretary of Housing and Urban Development (HUD), with respect to cash down payments, to consider as cash or its equivalent any amounts borrowed from (currently, gifted by) a family member, provided such funds are paid back (as under current law). Provides that the principal obligation of the mortgage and the obligation secured by such lien may not exceed 100% of the appraised value of the property plus specified related charges and fees (as under current law). Repeals the inclusion of any initial service charges, appraisal, inspection and other fees in connection with the mortgage. Prohibits cash down payments from consisting, in whole or in part, of funds provided before, during, or after closing of the property sale by: (1) the seller or any other person or entity that financially benefits from the transaction; or (2) any third party or entity that is reimbursed, directly or indirectly, by such parties.

Section 2114 –

Releases from HUD upfront mortgage insurance premium requirements: (1) certain mortgages secured by one- to four-family dwellings that are obligations of the General Insurance Fund (GIF); (2) insured rehabilitation loans for one- to four-family structures; and (3) condominium mortgages. Increases from: (1) 2.25% to 3% the maximum upfront mortgage insurance premium HUD may collect on mortgages secured by a one- to four-family dwelling that is an obligation of the Mutual Mortgage Insurance (MMI) Fund; and (2) 2% to 2.75% such premium if, as under current law, the mortgagor is a first-time homebuyer who completes a HUD approved program of counseling with respect to the responsibilities and financial management involved in homeownership.

Section 2115 –

Replaces the GIF with the MMI Fund with respect to funds received and disbursements made in connection with rehabilitation loans for one- to four-family structures.

Section 2116 –

Requires the HUD Secretary to notify the Secretary of Agriculture (among others) whenever any discretionary action has been taken to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program.

Section 2117 –

Permits the Secretary to insure any mortgage covering a one-family unit in a condominium if, in addition to other specified requirements, the project of which it is part has a certain HUD-insured blanket mortgage. Includes among insurable

one-family units (condominiums) in multifamily projects those in which the dwelling units are manufactured housing units, semidetached or detached.

Section 2118 –

Revises requirements for the MMI Fund, specifying operating goals among other things. Requires an annual independent actuarial study of the Fund, on the basis of which the Secretary may make either: (1) programmatic adjustments to reduce any risk to the Fund; or (2) appropriate premium adjustments. Makes insured mortgages used in conjunction with the Homeownership Voucher program, as well as reverse mortgages, obligations of the MMI Fund.

Section 2119 –

Makes insurance of a Native Hawaiian or Indian reservation mortgage the obligation of the MMI Fund (instead of the GIF).

Section 2121 –

Redefines "home mortgage" and "mortgage" to include subordinate mortgage, with respect to FHA insurance of cooperative housing projects.

Section 2122 –

Eliminates the limitation on the aggregate number of home equity conversion mortgages (HECMs, or reverse mortgages) for elderly homeowners insured under the National Housing Act. Revises insurance eligibility requirements for mortgagees and mortgagors. Requires the HUD Secretary to establish qualification standards and counseling protocols for mortgagor counselors. Repeals the prohibition against up-front premiums for mortgages to fund long-term care insurance, together with the related authority to refinance existing mortgage and finance closing costs. Revises funding requirements for the mortgagor counseling program to allow use of a portion of collected mortgage insurance premiums to adequately fund required counseling and disclosure activities, including counseling for those homeowners who elect not to take out a home equity conversion mortgage, provided that the use of such funds is based upon accepted actuarial principles. Authorizes the Secretary to insure an HECM to: (1) enable an elderly mortgagor to purchase a one- to four-family dwelling unit, one unit of which the mortgagor will occupy as a primary residence; and (2) provide for any future payments to the mortgagor, based on available equity. Establishes a single national loan limit for HECMs equivalent to the limit for a one-family residence under the Federal Home Loan Mortgage Corporation Act. Directs: (1) the Secretary to establish specified limits on the origination fee that may be charged to an HECM mortgagor, including a maximum fee of $6,000, adjustable for inflation; and (2) the Comptroller General to study and report to Congress on the costs and availability of credit under the HECMs for elderly homeowners program.

Section 2123 –

Amends the Energy Policy Act of 1992 to raise the cap on the price of the cost-effective energy efficiency improvements under the energy efficiency mortgages program.

Section 2124 –

Amends the National Housing Act to require the Secretary to carry out a pilot program to establish, and make available to mortgagees, an automated process for providing alternative credit rating information for mortgagors and prospective mortgagors (under mortgages on one- to four-family residences) without sufficient credit history, for determining their creditworthiness. Allows such alternative credit rating information to include among other information, rent, utilities, and insurance payment histories. Requires the Comptroller General to identify to Congress: (1) the number of additional mortgagors served using the automatic process; and (2) the impact of such process and the insurance of mortgages pursuant to it on the safety and soundness of FHA mortgage insurance funds of which such mortgages are obligations.

Section 2125 –

Requires the Secretary and the FHA Commissioner to develop, implement, and report to specified congressional committees a plan to improve the FHA loss mitigation process.

Section 2126 –

Authorizes appropriations to the Secretary for FY2008-FY2012 from the negative credit subsidy for FHA mortgage insurance programs to increase funding for: (1) technology; (2) processes; (3) program performance; (4) fraud elimination; and (5) appropriate staffing in connection with such programs. Conditions such authorization for any fiscal year upon certification by the Secretary that mortgage insurance premiums charged during it: (1) are established at the minimum amount sufficient to comply with the requirements for the MMI capital ratio; and (2) ensure the safety and soundness of the other FHA mortgage insurance funds. Requires any such negative credit subsidy to ensure adequately the efficient delivery and availability of FHA mortgage insurance programs. Requires the Secretary to study and report to Congress on how best to update and upgrade FHA mortgage insurance program processes and technologies so that: (1) the procedures for originating, insuring, and servicing of mortgages conform with those customarily used by secondary market purchasers of residential mortgage loans; and (2) such processes and technology provide appropriate staffing for such programs.

Section 2127 –

Amends the Housing and Urban Development Act of 1968 to revise post-purchase housing counseling eligibility requirements for homeowners who are, or are expected to be, unable to make payments, correct a home loan delinquency within a reasonable time, or resume full home loan payments due to a reduction

in the homeowner's income. Extends eligibility to such a homeowner that has a significant: (1) reduction in household income due to divorce or death; or (2) increase in his or her basic expenses or those of an immediate family member (including the spouse, child, or parent for whom the homeowner provides substantial care or financial assistance) due to an unexpected or significant increase in medical expenses, a divorce, unexpected and significant damage to the property, the repair of which will not be covered by private or public insurance, or a large property-tax increase. Adds as an alternative criterion that the annual income of the homeowner is no longer greater than the annual low- or moderate-income. Repeals the automatic counseling eligibility of first-time home buyers whose mortgage: (1) principal obligation exceeds 97% of the property's appraised value; and (2) will be insured.

Section 2128 –

Requires the Secretary to establish a demonstration program to test the effectiveness of alternative forms of pre-purchase homeownership counseling for up to 3,000 first-time homebuyers approved for a home loan with a loan-to-value (LTV) ratio between 97% and 98.5% (eligible homebuyers). Specifies such alternative forms as: (1) telephone counseling; (2) individual in-person counseling; (3) web-based counseling; (4) counseling classes; or (5) any other appropriate form or type of counseling. Authorizes the Secretary to provide incentives to eligible homebuyers to participate in the demonstration program, including reduction of any FHA insurance premium charges owed.

Section 2129 –

Amends the federal criminal code to subject an individual to a fine of up to $1 million and imprisonment for up to 30 years, or both, for certain fraudulent actions intended to influence FHA action in any way, including with respect to an insurance agreement or application for insurance or a guarantee.

Section 2130 –

Prohibits the Secretary, through FY2009, from increasing premiums for the FHA multifamily insurance program above the FY2006 premiums, unless without such increase, insurance of additional mortgages under the program would require the appropriation of new budget authority to cover the costs of such insurance. Requires the Secretary, at least 30 days before such an increase takes effect, to: (1) notify specified congressional committees of the increase; and (2) publish notice of it in the Federal Register. Authorizes the Secretary to waive the 30-day notice requirement if waiting 30 days before increasing premiums would cause substantial damage to the solvency of multifamily housing programs.

Section 2133 –

Prohibits the Secretary, for 12 months beginning on October 1, 2008, from taking any action to implement or carry out risk-based premiums designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk the insurance contract represents. Prohibits the Secretary, during the same period, from taking any

action to implement or carry out any other risk-based premium product related to the insurance of any mortgage on a single family residence under title II of the National Housing Act, where the premium price for such new product is based in whole or in part on a borrower's Decision Credit Score or any successor score.

Title V - S.A.F.E. Mortgage Licensing Act

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 or S.A.F.E. Mortgage Licensing Act of 2008 –

Section 1501 –

Encourages the states, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry in order to increase uniformity, reduce regulatory burdens, enhance consumer protection, and reduce fraud.

Section 1504 –

Sets forth general registration and state-licensing requirements, including one for a unique identifier, for engaging in loan origination transactions.

Section 1505 –

Prescribes requirements for state licensing and registration applications and issuance, including testing.

Section 1506 –

Prescribes minimum standards for license renewal for state-licensed loan originators, including continuing education

Section 1507 –

Requires federal banking agencies jointly, through the Federal Financial Institutions Examination Council, to develop and maintain a system for registering with the Nationwide Mortgage Licensing System and Registry (Registry) as registered loan originators any employees of a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

Section 1508 –

Directs the HUD Secretary to establish and maintain a backup licensing and registration system for loan originators operating in a state that either: (1) does not, after a certain period of time, have a licensing and registering system for loan originators that meets the requirements of this Act; or (2) does not participate in the Registry.

Section 1509 –

Requires the HUD Secretary to establish and maintain a nationwide mortgage licensing and registry system upon determining that the Registry is not in compliance with this Act.

Section 1510 –

Authorizes the federal banking agencies, the Farm Credit Administration, the HUD Secretary, and the Registry to charge fees to cover the costs of maintaining and providing access to information from the Registry.

Section 1511 –

Directs the Attorney General to provide state officials responsible for regulating state-licensed loan originators access to all criminal history information to the extent criminal history background checks are required under the laws of the requesting state.

Section 1514 –

Grants the HUD Secretary enforcement powers under its backup licensing system.

Section 1515 –

Grants state licensing agencies authority to investigate and examine loan originators.

Section 1517 –

Instructs the HUD Secretary to study and report to Congress on the root causes of home loan defaults and foreclosures.

Making Home Affordable (MHA)

Congress passed the Emergency Economic Stabilization Act of 2008 (the "Act") on October 3, 2008. The purpose of the Act was to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority was used, in part, *to "preserve homeownership."* Treasury Secretary and the Director of the Federal Housing Finance Agency announced the *Making Home Affordable program on February 18, 2009*. Specifically, the Making Home Affordable program consists of two sub-programs: HARP and HAMP. On March 4, 2009 to present, the Treasury Department, Fannie Mae, Freddie Mac and HUD (FHA) have issued a series of directives for the servicers of mortgage loans for the implementation of HAMP and HARP.

Making Home Affordable established a public policy to help borrowers avoid foreclosures. Lawsuits will test whether this is a new right, and whether there is a 5th amendment due process right affording the borrower the right to notice and opportunity to be heard, including whether the borrower is entitled to a written notice of denial with reasons sufficiently set forth to afford borrower the opportunity to assess whether a denial of (HAMP) program benefits was in error or wrongful and in violation of his/her rights; and whether borrower has a right to appeal.

Williams, et al v Geithner, et al (HAMP Due Process)

On July 28, 2009, the case of Nichole Williams, Johnson Sendolo, On behalf of themselves and all others similarly situated, Plaintiffs vs. Timothy F. Geithner, as United States Secretary of the Treasury U.S. Department of the Treasury, The Federal Housing Finance Agency, as conservator for the Federal National Mortgage Association, d/b/a Fannie Mae and the Federal Home Loan Mortgage Corporation d/b/a Freddie Mac, Federal National Mortgage Association, d/b/a Fannie Mae, and Federal Home Loan Mortgage Corporation d/b/a Freddie Mac, Ocwen Loan Servicing, LLC, GMAC Mortgage, f/d/b/a Homecomings Financial, Defendants, was filed in In The United States District Court For The District Of Minnesota.

The complaint alleges at paragraph 2 that: "Mr. Sendolo applied for the program, and then, without being given any reason or an opportunity to appeal, his application was denied and his house was sold at a Sheriff's Sale. Ms. Williams faxed, emailed, and verbally requested a modification through HAMP with the help of her housing counselor, but Ms. Williams' requests were ignored. Instead, the servicer offered its own non-HAMP three-month payment plan. The temporary plan does not offer any of the advantages of a HAMP modification and foreclosure continues to be eminent."

At paragraph 3 it alleges that: " In both cases, Mr. Sendolo and Ms. Williams' constitutional rights to procedural due process have been violated. HAMP is part

of a $75 billion government program to prevent foreclosures, approximately six times larger than the National School Lunch Program. Both the enabling legislation and the federal government's own implementing guidelines make it clear that eligible and qualified homeowners "shall" receive a loan modification, thus creating legal entitlements for thousands of Minnes homeowners facing foreclosure. Yet, the government has denied Mr. Sendolo, Ms. Williams, and others like them the most fundamental due process protections: notice of the basis for a decision and an opportunity to appeal."

At paragraph 4 and 5 it alleges:
"HAMP does not require that homeowners are given any notice of a denial at all, and for homeowners, like Mr. Sendolo, the notices that are given do not provide any specific reason for the denial. HAMP is complex, and the lack of transparency prevents Mr. Sendolo and others like him from correcting errors or misinformation. The lack of opportunity to appeal makes it even more difficult to access the benefits. Now that Mr. Sendolo's house has been sold, there is also no formal and uniform method to undo the wrongful foreclosure.

"Plaintiffs are seeking to enjoin all foreclosures in Minnesota of mortgages owned by Fannie Mae or Freddie Mac, or serviced by one of the mortgage loan servicers who have agreed to administer the HAMP program and provide loan modifications to the homeowners they service."

Plaintiffs claim that the purpose of the statute (Emergency Economic Stabilization Act of 2008 of October 3, 2008) is to preserve homeownership through prevention of foreclosure by the granting of a HAMP Modification if eligible. Plaintiffs claim to have satisfied the eligibility criteria. Since no notice of denial or opportunity and procedure for appeal was given plaintiffs, it is alleged that plaintiffs' constitutional due process rights were violated. Plaintiffs claim they were denied access to a HAMP Modification resulting in a wrongful foreclosure in violation of due process rights, not given notice of denial or opportunity to appeal.

The authority and statutory purpose and mandates are alleged as follows:

> 65. Congress passed the Emergency Economic Stabilization Act of 2008 (the "Act") on October 3, 2008.
> 66. The purpose of the Act was to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority was used, in part, to "preserve homeownership."
> 67. In addition to allocating $700 billion to the United States Department of the Treasury, the Act also specifically granted the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program or TARP. 12 U.S.C. §§ 5211, 5225 (2008).
> 68. In exercising its authority to administer TARP, Congress mandated that the Secretary "shall" take into consideration the "need to help families keep their homes and to stabilize communities." 12 U.S.C. § 5213(3) (2008). To that end,

Congress created two specific sections within Title I of the Act related to homeowners. *See Id.*

69. Section 109 is entitled "Foreclosure Mitigation Efforts," and specifically states that the Secretary "shall" implement a plan to "maximize assistance for homeowners." 12 U.S.C. § 5219(a). These efforts are to be coordinated with other federal agencies including the Federal Housing Finance Agency, which is the conservator for Fannie Mae and Freddie Mac. *Id.*

70. The Act further requires the Secretary to consent to any reasonable loan modification offer: [T]he Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitations on modifications. 12 U.S.C. 5219(c). 71. Similarly, Section 110 requires the Federal Housing Finance Agency, as conservator for Fannie Mae and Freddie Mac, to create and implement a plan to prevent foreclosures. Specifically, the Act states: [T]he Federal property manager [defined, in part, as the Federal Housing Finance Agency] shall implement a plan that seeks to maximize assistance for homeowners and…minimize foreclosures. 12 U.S.C. § 5220 (b).

72. The statutory tools to be used by Fannie Mae and Freddie Mac include reducing interest rates and reducing the principal balance of mortgage loans.

C. The Creation of the Making Home Affordable Program and HAMP.

73. Pursuant to its legal authority, as granted to it by Congress, both the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the Making Home Affordable program on February 18, 2009. 74. Specifically, the Making Home Affordable program consists of two sub-programs.

75. The first sub-program relates to the creation of refinancing products for individuals with minimal or negative equity in their home, which eventually was entitled the Home Affordable Refinance Program or HARP.

76. The second sub-program relates to the creation and implementation of a uniform loan modification protocol, which eventually was entitled the Home Affordable Modification Program or HAMP.

77. The scope of HAMP is broad; approximately 85 percent of homeowners in the United States are eligible for the program.

78. Homeowners who meet the government's criteria and standards for the program are entitled to a loan modification pursuant to the terms of HAMP. 88. From March 4, 2009 to present, the Treasury Department, Fannie Mae and Freddie Mac have issued a series of directives for the servicers of mortgage loans and the implementation of HAMP.

Update: Since the filing of the original complaint, Guidelines and Supplemental Directives (**09-01 to 09-08**) have been announced clarifying that certain borrower notices and responses are in fact required from the Servicer including notices of acknowledgment of receipt of a HAMP request, and written approval or denial of a HAMP modification with an explanation, or consideration of alternative options (SD 09-07; SD 09-08).

Due process generally requires that no person shall be deprived of life, liberty or property without due process of law which appears to include: notice of the rules

and procedures, the opportunity to be heard, notice that documents or information missing will result in denial if not cured, notice of denial with reasons sufficient to assess whether an error was made, an opportunity to cure or request correction of a perceived error or wrongful denial, and an opportunity to file an appeal.

If appears that Treasury (as the key party to the drafting and issuance of the Guidelines and Supplemental Directives) is continuing to implement the Program with more and more communication fairness and specificity; which acts to ensure due process rights. (See SD 09-07; SD 09-08)

See Program Documents _D7

State of Ohio et al v Carrington Mortgage (Contractual Duties re Unfair & Deceptive Practices)

In July, this became the first case by an Attorney General to sue a loan servicer for unfair and deceptive loan modifications. This case is currently in litigation in Franklin County Court of Common Pleas. As of Sept. 30, Carrington implemented a voluntary 60-day moratorium on home foreclosures.

This case is based upon an agreement and Stipulated Preliminary Injunction entered into in part by the Ohio Attorney General and Carrington. The violations are for the most part consumer protection issues and failure to investigate and resolve consumer disputes, or offer good faith workouts or modifications. The list of bad-acts include failure to timely offer borrowers workouts, etc. Although, the violations come to the court by way of breach of contract, the acts are akin to the complaints heard nationwide and in Williams, et al v Geithner, et al (HAMP Due Process).

If appears that Treasury (as the key party to the drafting and issuance of the Guidelines and Supplemental Directives) is continuing to create the Program with more and more specificity; which acts to ensure due process rights. (See SD 09-07; SD 09-08)

See Program Documents _D8

WHY STOP THERE?

OHIO ATTORNEY GENERAL v AHMSI (Incompetent Loan Servicing; Deceptive Acts)

On November 9, 2009, Ohio Attorney General Richard Cordray filed another lawsuit against a Servicer for poor or unfair mortgage servicing, this time against American Home Mortgage Servicing Inc., a Texas-based company servicing more than 12,000 subprime and prime mortgage loans in Ohio.

The lawsuit alleges numerous violations of the Ohio Consumer Sales Practices Act, including but not limited to: incompetent and inadequate customer service, failure to respond to requests for assistance, failure to offer timely or affordable loss mitigation options to borrowers and unfair and deceptive loan modification terms.

The suit alleges that defendant's acts were more than negligent, but predatory financial practices. It alleges that AHMSI required loan modification agreements that forced consumers to pay excessive fees, waive their rights, and that the terms of loan modifications were unconscionably one-sided in favor of AHMSI. The Ohio Attorney General seeks a permanent injunction from the continuation of unfair and *deceptive loan modification practices* in OHIO, consumer restitution, civil penalties, and damages. The suit also seeks a court order that AHMSI implement processes designed to provide efficient, competent, and adequate customer service to all of its Ohio mortgage customers.

For a copy of the Complaint; (See Program Documents Ohio Attorney General v AHMSI _D9)

UPDATE: On or about 11/6/09 AHMSI filed a lawsuit against the Ohio Attorney General seeking declaratory judgment finding that its servicing practices are compliant with Ohio law. Brittany Dunn reports: "Rather than wait to be named as a defendant in a suit that AHMSI considers to be rash and without merit, we elected to petition an Ohio state court for a declaration that AHMSI's servicing practices are fully compliant with Ohio law," Dorchuck said. "AHMSI is proud of its many successful efforts to assist distressed homeowners and looks forward to judicial resolution of any questions that any party might have about our performance." Dorchuck added, "Although we respect the attorney general's commitment to serve the people of Ohio, we are convinced that these allegations are entirely without merit, and intend to defend ourselves vigorously against them."

SPECIAL NOTE: WRONGFUL MODIFICATIONS / WRONGFUL WORKOUTS

As the author warned at the AFN, CMBA and CMIS conferences over the last 2 years, Servicers must change its practices to mitigate or avoid major lawsuits for wrongful modifications, and wrongful workout practices. The days of wrongful loan modifications and wrongful workouts are here.

Making Home Affordable

Home Affordable Modification Program (HAMP)
Home Affordable Refinance Program (HARP)

The official public website for the Making Home Affordable program directs borrowers to www.makinghomeaffordable.gov . The website states:

The Making Home Affordable Program is part of the Obama Administration's broad, comprehensive strategy to get the economy and the housing market back on track. The Making Home Affordable Program offers two different potential solutions for borrowers: (1) refinancing mortgage loans, through the Home Affordable Refinance Program (HARP), and (2) modifying mortgage loans, through the Home Affordable Modification Program (HAMP).

The website offers help for troubled borrowers.

The first step is to "Look Up Your Loan" to see if it is owned or guaranteed by Fannie Mae or Freddie Mac. The website states:

> "Only loans owned or guaranteed by Fannie Mae or Freddie Mac are eligible. Your mortgage company can tell you who owns your loan, or you can contact Fannie Mae and Freddie Mac directly by clicking on the links below and completing the forms for each company."

Fannie Mae

- 1-800-7FANNIE (8am to 8pm EST)
- www.fanniemae.com/loanlookup

Freddie Mac

- 1-800-FREDDIE (8am to 8pm EST)
- www.freddiemac.com/mymortgage

This is located at: http://makinghomeaffordable.gov/loan_lookup.html

The Fannie Mae LOOK UP informs that borrower if Fannie owns their loan by providing a street address, unit, city, state, and ZIP code. The Fannie lookup url is: http://loanlookup.fanniemae.com/loanlookup/

Freddie Mac requires the same info plus the "Last 4 Digits of Social Security Number Enter last 4 digits only. Format: ####" and a Verification of ownership. The Freddie lookup url is: https://ww3.freddiemac.com/corporate/

CLARIFICATION NOTE: It is important to note that loans owned or guaranteed by the GSEs (Fannie Mae or Freddie Mac) are eligible. Also, NON-GSE loans are eligible if the servicer has signed a HAMP Servicer Participation Agreement agreeing to be bound by the program rules.

Home Affordable Modification Program: Overview

Pursuant to the official website for the HAMP Servicer, the following overview procedure is stated at https://www.hmpadmin.com//portal/programs/hamp.html :

> The Home Affordable Modification Program is designed to help as many as 3 to 4 million financially struggling homeowners avoid foreclosure by modifying loans to a level that is affordable for borrowers now and sustainable over the long term. The program provides clear and consistent loan modification guidelines that the entire mortgage industry can use.
>
> Borrower eligibility is based on meeting specific criteria including:
>
> 1) borrower is delinquent on their mortgage or faces imminent risk of default
>
> 2) property is occupied as borrower's primary residence
>
> 3) mortgage was originated on or before Jan. 1, 2009 and unpaid principal balance must be no greater than $729,750 for one-unit properties.
>
> After determining a borrower's eligibility, a servicer will take a series of steps to adjust the monthly mortgage payment to 31% of a borrower's total pretax monthly income:
>
> •First, reduce the interest rate to as low as 2%,
>
> •Next, if necessary, extend the loan term to 40 years,
>
> •Finally, if necessary, forbear (defer) a portion of the principal until the loan is paid off and waive interest on the deferred amount.
>
> The Home Affordable Modification Program includes incentives for borrowers, servicers and investors - these incentives are detailed in the documents below.

Servicer participation is voluntary for non-GSE loans, and mandatory for loans owned or guaranteed by Fannie Mae or Freddie Mac. Participating servicers generally are required to:

> (1) Identify borrowers who may qualify and assess their eligibility (including determination of financial hardship, reduction or loss of income, increase in expense, change in household financial circumstances, lack of sufficient cash reserves, excessive monthly debt, or other reasons for

hardship),

(2) Perform NPV test to determine if a modification is required (if the NPV is positive the HAMP modification is required; if negative, it is within the Servicer/Investor discretion, however if not offered, other loss mitigation alternatives for foreclosure are required to be explored including Hope for Homeowners (short) refinance option),

(3) Calculate proposed payment amount, and send documents to borrowers to complete and return,

(4) Receive borrowers completed documents and first trial payment, then confirm borrowers eligibility, and

(5) Provided terms of trial period are satisfied, execute modification.

Fannie Mae will administer the program, and Freddie Mac will act as the compliance agent. Freddie will sample denials and review same in a second-look process.

Treasury/HAMP Supplemental Directive (09-01) states at page 3:

> "A borrower that is current or less than 60 days delinquent who contacts the servicer for a modification, appears potentially eligible for a modification, and claims a hardship must be screened for imminent default. The servicer must make a determination as to whether a payment default is imminent based on the servicer's standards for imminent default and consistent with applicable contractual agreements and accounting standards. If the servicer determines that default is imminent, the servicer must apply the Net Present Value test."

The official public website for the Making Home Affordable program directs borrowers to determine their initial eligibility for HAMP modifications at the following url: http://makinghomeaffordable.gov/modification_eligibility.html . The test is as follows:

Home Affordable Modifications

If you can no longer afford to make your monthly loan payments, you may qualify for a loan modification to make your monthly mortgage payment more affordable. Millions of borrowers who are current, but having difficulty making their payments and borrowers who have already missed one or more payments may be eligible.

Am I eligible for a Home Affordable Modification? Answer these questions:

1. **Is your home your primary residence?** ☐ Yes ☐ No
2. **Is the amount you owe on your first mortgage equal to or less than $729,750?** ☐ Yes ☐ No
3. **Are you having trouble paying your mortgage?**
   For example, have you had a significant increase in your mortgage payment OR reduction in your income since you got your current loan OR have you suffered a hardship that has increased your expenses (like medical bills)? ☐ Yes ☐ No
4. **Did you get your current mortgage before January 1, 2009?** ☐ Yes ☐ No
5. **Is your payment on your first mortgage (including principal, interest, taxes, insurance and homeowner's association dues, if applicable) more than 31% of your current gross income?**
   Note: *if you are uncertain, click here to determine* ☐ Yes ☐ No

---

If the borrower answers in the affirmative, the following notice is displayed:

YES, YOU MAY QUALIFY FOR HOME AFFORDABLE MODIFICATION

Based on your answers to the modification eligibility questions, you may qualify for a Home Affordable Modification. The next step is to gather the information you will need when you speak

to a housing counselor or the servicer of your mortgage. This includes:

CHECKLIST

- Information about the monthly gross (before tax) income of your household, including recent pay stubs if you receive them or documentation of income you receive from other sources.
- Your most recent income tax return.
- Information about your savings and other assets
- Information about your first mortgage, such as your monthly mortgage statement.
- Information about any second mortgage or home equity line of credit on the house.
- Account balances and minimum monthly payments due on all of your credit cards.
- Account balances and monthly payments on all your other debts such as student loans and car loans.
- A completed Hardship Affidavit describing any circumstances that caused your income to be reduced or expenses to be increased (job loss, divorce, illness, etc.) if applicable.

After you have this information, you should **call your mortgage servicer** and ask to be considered for a Home Affordable Modification. The number should be on your monthly mortgage bill or coupon book.

New HARDSHIP HAMP Form: Note that the "Hardship Affidavit" linked to the above as of 11/9/09 is the old hardship form, not the new hardship form now approved for use and required as of January 1, 2010. Also those using the old April Hardship form should cease doing so as it will no longer be accepted. The new Hardship form issued by Treasury on October 8, 2009 in **Supplemental Directive 09-07** is entitled:

> **MHA Request for Modification and Affidavit form (RMA)** - This form incorporates borrower income and expense information, a revised Hardship Affidavit, the SIGTARP fraud notice and portions of the current Home Affordable Modification Trial Period Plan. The RMA follows:

New Hardship RMA Form (See Program Documents MHA Request for Modification and Affidavit form (RMA) __D10)

RMA page 1

MAKING HOME AFFORDABLE.gov

Making Home Affordable Program
Request For Modification and Affidavit (RMA)

Loan I.D. Number _____

I want to:	☐ **Keep the Property**	☐ **Sell the Property**
The property is my:	☐ **Primary Residence**	☐ **Second Home** ☐ **Investment**
The property is:	☐ **Owner Occupied**	☐ **Renter occupied** ☐ **Vacant**

BORROWER		**CO-BORROWER**	
BORROWER'S NAME		CO-BORROWER'S NAME	
SOCIAL SECURITY NUMBER	DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE OF BIRTH
HOME PHONE NUMBER WITH AREA CODE		HOME PHONE NUMBER WITH AREA CODE	
CELL OR WORK NUMBER WITH AREA CODE		CELL OR WORK NUMBER WITH AREA CODE	
MAILING ADDRESS			
PROPERTY ADDRESS (IF SAME AS MAILING ADDRESS, JUST WRITE SAME)		EMAIL ADDRESS	

Is the property listed for sale? ☐ Yes ☐ No
Have you received an offer on the property? ☐ Yes ☐ No
Date of offer _____ Amount of Offer $_____
Agent's Name:
Agent's Phone Number:
For Sale by Owner? ☐Yes ☐ No

Have you contacted a credit-counseling agency for help?
☐ Yes ☐ No
If yes, please complete counselor contact information below.
Counselor's Name:
Counselor's Phone Number:
Counselor's Email:

Who pays the Real Estate Tax bill on your property?
☐ I do ☐ Lender does
Are the taxes current? ☐ Yes ☐ No
Condominium or HOA Fee ☐ Yes ☐ No $ _____
Paid to: _____

Who pays the hazard insurance policy for your property?
☐ I do ☐ Lender Does ☐ Paid by Condo or HOA
Is the policy current? ☐ Yes ☐ No
Name of Insurance Co. _____
Insurance Co. Tel #: _____

Have you filed for bankruptcy? Yes ☐ No ☐ If yes: ☐Chapter 7 ☐ Chapter 13 Filing Date:_____
Has your bankruptcy been discharged? ☐Yes ☐No Bankruptcy case number _____

If there are additional Liens/Mortgages or Judgments on this property, please name the person(s), company or firm and their telephone numbers.

Lien Holder's Name/Servicer	Balance	Contact Number	Loan Number

HARDSHIP AFFIDAVIT (use back of request for explanation IF necessary)

I (We) am/are requesting review under the Making Home Affordable program. I am having difficulty making my monthly payment because of financial difficulties created by *(Please check all that apply)*:

☐ **My** household income has been reduced. For example unemployment, underemployment, reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower.

☐ **My** monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt.

☐ **My** expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes.

☐ **My** cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time.

☐ Other _____

Explanation (continue on back of page 3 if necessary): _____

_____

RMA page 2

INCOME/EXPENSES FOR HOUSEHOLD*

Number of People in Household _____

1		2		3	
Monthly Household Income		**Monthly Household Expenses/Debt**		**Household Assets**	
Monthly Gross wages	$	First Mortgage Payment	$	Checking Account(s)	$
Overtime	$	Second Mortgage Payment	$	Checking Account(s)	$
Child Support / Alimony*	$	Insurance	$	Saving s/ Money Market	$
Social Security/SSDI	$	Property Taxes	$	CDs	$
Other monthly income from pensions, annuities or retirement plans	$	Credit Cards / Installment Loan(s) (total minimum payment per month)	$	Stocks / Bonds	$
Tips, commissions, bonus and self-employed income	$	Alimony, child support payments	$	Other Cash on Hand	$
Rents Received	$	Net Rental Expenses	$	Other Real Estate (estimated value)	$
Unemployment Income	$	HOA/Condo Fees/Property Maintenance	$	Other _____	$
Food Stamps/Welfare	$	Car Payments	$		$
Other (investment income, royalties, interest, dividends etc) _____	$	Other _____ _____	$	Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.)	
Total (Gross income)	**$**	**Total Debt/Expenses**	**$**	**Total Assets**	**$**

***** ALL INCOME MUST BE DOCUMENTED ******

*** Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower please specify using the back of this form if necessary. You are not required to disclose Child Support, Alimony or Separation Maintenance income, unless you choose to have it considered by your servicer.**

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER ☐ I do not wish to furnish this information		**CO-BORROWER** ☐ I do not wish to furnish this information	
Ethnicity:	☐ Hispanic or Latino ☐ Not Hispanic or Latino	**Ethnicity:**	☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	**Race:**	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex:	☐ Female ☐ Male	**Sex:**	☐ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type) & ID Number	Name/Address of Interviewer's Employer
This application was taken by: ☐ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet	Interviewer's Signature Date _____ Interviewer's Phone Number (include area code)	

RMA page 3

ACKNOWLEDGEMENT AND AGREEMENT

In making this request for consideration under the Making Home Affordable Program I certify under penalty of perjury:

1. That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure.
2. I understand that the Servicer, the U.S. Department of the Treasury, or its agents may investigate the accuracy of my statements, may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate Federal law.
3. I understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement under Making Home Affordable and may pursue foreclosure on my home.
5. That: my property is owner-occupied; I intend to reside in this property for the next twelve months; I have not received a condemnation notice; and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify.
6. I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner.
7. I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document.
8. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan; (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services in conjunction with Making Home Affordable; and (e) any HUD certified housing counselor.

_____	_____	_____	_____
Borrower Signature	Date	Co-Borrower Signature	Date

If you have questions about this document or the modification process, please call your servicer at _____. If you have questions about the program that your servicer cannot answer or need further counseling, you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.

888-995-HOPE™
Homeowner's HOPE™ Hotline

NOTICE TO BORROWERS

Be advised that you are signing the following documents under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution.
By signing the enclosed documents you certify, represent and agree that:
"Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling **1-877-SIG-2009** (toll-free), 202-622-4559 (fax), or www.sigtarp.gov. Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

Modification Evaluator

Use this tool to determine if you may be eligible for the Home Affordable Modification. Simply enter your current monthly gross income. The tool will calculate a mortgage payment guideline amount. If your current mortgage payment is above this amount and you meet the other Home Affordable Modification guidelines, then you may be eligible. Please be sure to read the notes below for further information.

Modification Evaluator for Home Affordable Mortgage Modification

Enter Your Gross Monthly Income This is the income of all borrowers who signed your mortgage BEFORE taxes and any adjustments. *If you need help, click here.*	4000
Mortgage Payment-to-Income Guideline	31%
Mortgage Payment Guideline	**$1240**

Calculate

If your current mortgage payment is above the amount shown in the **Mortgage Payment Guideline**, then you may be eligible for the Home Affordable Modification. Please go to the Modification Eligibility page to get started.

Gross Monthly Income: is the total income of all borrowers who signed your mortgage before any taxes or other deductions are made. If more than one person signed your mortgage, such as your spouse or a co-signer, add the gross monthly income of all borrowers and enter this amount.

Mortgage Payment: is defined as what you pay on a monthly-basis for principal, interest, property taxes, hazard insurance and homeowner's association fees, if applicable. Please include information about your first (or "primary") mortgage only. Do not include any payments on your second mortgage. You may have taxes and interest in escrow added to your monthly payment already, so be careful to count taxes and escrow only once.

Mortgage Payment Guideline: this is calculated as 31% of your current monthly gross income. If your current monthly mortgage payment is above this amount, you may be eligible for the Home Affordable Modification. **Note: to protect your privacy, this site will not record your information.**

Monthly Gross Income Calculator

Gross Monthly Income: is the total monthly income of all the borrowers who signed your mortgage before any taxes or other deductions are made. If you do not know your monthly gross income, use this calculator below:

Monthly Take Home Pay (Net Income)	3200
Estimated Monthly Gross Income	$4000

Calculate

Notes:

Enter Your Monthly Take Home Pay (Net Income): This is the amount of money all borrowers who signed your mortgage (for example your spouse or a co-signer) are actually paid each month after taxes are deducted. Be sure to add the monthly net pay of all borrowers. This is a monthly amount so if any borrowers are paid twice a month, simply add those two amounts together to get that borrower's monthly net pay.

Estimated Monthly Gross Income: This is a rough estimate of the total monthly pay of all borrowers before any taxes are deducted.

Note: please write this number down; to protect your privacy, this site will not record your information.

CALULATION NOTE: To arrive at GROSS INCOME from NET INCOME multiple the NET by 1.25. For example, $3200 NET x 1.25 = $4,000 GROSS.

Payment Reduction Estimator

Under the Home Affordable Modification program, the target maximum amount for your mortgage payment (or mortgage debt-to-income) should be 31% of your gross (pre-tax) monthly income. This Payment Reduction Estimator will determine what your current mortgage debt-to-income is and how much your monthly payment may be reduced if you qualify for a modification.

Do not include any payments on your second mortgage. You may have taxes and interest in escrow added to your monthly payment already, so be careful to count taxes and escrow only once.

Payment Reduction Estimator for Home Affordable Mortgage Modification

Total Monthly Payment on Your First (or "primary") Mortgage
Be sure to INCLUDE principal, interest, taxes, insurance and homeowners association dues if applicable.
If you need help, click here.

3000

Enter Your Gross Monthly Income
This is the income of all borrowers who signed your mortgage BEFORE taxes and any adjustments.
If you need help, click here.

4000

Calculate

This is Your Current Debt-to-Income (DTI) Level	75%
Target DTI under the Home Affordable Modification	31%
Potential New Monthly Payment If You Qualify	**$1240**
Potential Monthly Payment Reduction If You Qualify	**$1760**

Note: to protect your privacy, this site will not record your information.

This form is found at:
http://makinghomeaffordable.gov/payment_reduction_estimator.html

Monthly Housing Payment Calculator

Total Monthly Payment on Your Primary First Mortgage: is your total monthly payment including principal, interest, taxes, insurance and homeowner's association dues or assessments. If you do not know this amount, use this calculator below:

Enter Monthly Principal and Interest on Your Primary Mortgage Only	2500
Enter Your Monthly Homeowner's Insurance Cost and any Homeowner's Association Dues or Assessments	250
Enter Monthly Taxes	250
This is Your Total Monthly Housing Payment	$3000

Calculate

Notes:

Enter Monthly Principal and Interest on Your Primary Mortgage Only: Includes the amount you are required to pay each month, even if you currently pay interest-only.

Enter Monthly Taxes: Include only the monthly amount, no matter how it is billed. If you pay your taxes annual, divide this amount by 12 to get your monthly tax payment.

This is Your Total Monthly Housing Payment: If you know your total monthly housing payment for your primary mortgage, leave the above fields blank and enter your total monthly payment amount here.

Homeowner's Association Dues or Assessments: If you pay HOA dues or assessments once a year – divide the annual amount by 12 and enter that amount. If you pay quarterly – multiply the quarterly payment by 4 then divide by 12 and enter that amount.

HAMP UPDATES & DISCUSSION:

OCTOBER 8, 2009: A BUSY HAMP DAY IN D.C.
New HAMP Supplemental Directive 09-07,
The HAMP 500,000 Modification Milestone Announcement,
New Servicer Performance Report, COB 9-30-09

On **October 8, 2009**, the Treasury and U.S. Department of Housing and Urban Development (HUD) announced (TG-315) a new milestone of more than 500,000 trial loan modifications in progress under the Making Home Affordable (MHA) program under the Home Affordable Modification Program (HAMP), beating the November 2009 deadline. It was reported that 500,000 represents about 40% of those eligible (CNBC 10/8/09). That would leave some 60% of the eligible homeowners not engaged in a HAMP solution to save their homes. However, the Obama Administration's Making Home Affordable (MHA) program (including HAMP and HARP) is slated to offer assistance to as many as 7 to 9 million homeowners making a good-faith effort to make their mortgage payments. That goal would result in 4 to 5 million homeowners with new access to refinancing under the Home Affordable Refinance Program (HARP) program, and 3 to 4 million under the HAMP mortgage modification program. With 500,000 modifications offered under HAMP, 2,500,000 (16.67%) to 3,500,000 (12.5%) remain as a HAMP policy goal, and most of the 4 to 5 million as a HARP policy goal. The press release also stated that: Senior Treasury and HUD officials held the next in a series of meetings with servicers this afternoon, with discussion focused on improving servicer efficiency and responsiveness to borrowers during the modification process. They also released its servicer performance report through the month of September – ending September 30, 2009.

QUICK SUMMARY: Also, with little fanfare, the Treasury released its *Supplemental Directive 09-07* which in part moves to standardize the borrower's evaluation forms and process, and requires the Servicer to respond to the borrower within 10 days from receipt of the borrower submission of the required information. It also requires the Servicer to complete its evaluation of borrower eligibility and notify the borrower of its determination within 30 days. If the Servicer determines that the borrower cannot be approved for a trial period plan, the Servicer must send written notice of same, and "consider the borrower for another foreclosure prevention alternative."

Servicer Performance Report, COB 9-30-09

The new Servicer Report indicates that some 2.48 million requests for financial information were sent to borrowers; 757,955 trial period plan offers were extended to borrowers on a cumulative basis, and 487,081 trial and permanent

modifications as of September 30, against a 3,100,305 Estimated Eligible 60 Day+ Delinquency. That results in 24.4% (757,955) Trial Plan Offers as a Share of Estimated Eligible 60 Day+ Delinquency and 15.7% or 16% (487,081) Trial Modifications as a Share of Estimated Eligible 60+ Day Delinquencies. This is a big jump in total numbers from the previous report. However, the Trial Modification Tracker: Trial Modifications as a Share of Estimated Eligible 60+ Day Delinquencies indicates highly non-uniform results. Saxon leads with 41% along with the other top 6 leaders above 20% ranging from 26%-33%. The 20 other servicers range from 0% to Wells Fargo with 20%. To be fair, some servicers with low percentages are newer to the program. Without speculating as to why some servicers are performing far differently than others, and as to the function of time, it is clear that more uniform results are warranted on program policy grounds alone.

Observation:

Whether its 40% or merely 12.5%-16.67% (or 24%) under HAMP, and most of 4 to 5 million under HARP, there is sufficient evidence that we must fashion an equally fair, fast, efficient and effective loss mitigation and communication process to handle the massive defaults, foreclosures, and REO property sales facing society today, tomorrow and in the foreseeable future. It is also obvious that the results are highly non-uniform and uniformity of results is critical to reach the maximum potential of the MHA/HAMP program.

The question must be asked and answered: Can we do better? Can the industry, the courts, and the homeowner come together and reach the MHA policy goals in full? The answer is Yes We Can -but - it will take a systemic change in the communication processes and systems that we currently use, supported by objectively obtainable standards in law and official guidelines. We must consult and serve all diverse and self-conflicting interests in creating a sustainable and fair solution. The solution must be an Effective, Efficient, Equally Fair & Transparent (“EEET”) Communication Process.

The Treasury Secretary also warned that rising foreclosures may be a source of weakness to the broader economy. The Financial Stability website warned:

> The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country. Millions of responsible families who make their monthly payments and

> fulfill their obligations have seen their property values fall, and are now unable to refinance to lower mortgage rates. Meanwhile, millions of workers have lost their jobs or had their hours cut, and are now struggling to stay current on their mortgage payments. As a result, as many as 6 million families are expected to face foreclosure in the next several years, with millions more struggling to stay current on their payments. The present crisis is real, but temporary. As home prices fall, demand for housing will increase, and conditions will ultimately find a new balance. Yet in the absence of decisive action, we risk an intensifying spiral in which lenders foreclose, pushing area home prices still lower, reducing the value of household savings, and making it harder for all families to refinance. In some studies, foreclosure on a home has been found to reduce the prices of nearby homes by as much as 9%.

However, the Center for Responsible Lending (Fact Sheet 9/25/09) states "13 million projected foreclosures on all types of loans during the next 5 years" may occur.

Observation:

Whether its 6 million over 3 years or 13 million over 5 years, more or less, with substantial court budget shortfalls, the courts and the related foreclosure and bankruptcy systems, will soon face debilitating backlogs not solvable through the current systems and processes.

Although the industry has successfully ramped up its efforts to process HAMP modifications to reach the program's November goal, there remains a huge bottleneck and backlog of loss mitigation evaluations and offers, foreclosures, and new foreclosure mediations, and a highly skewed non-uniformity of results, revealing the painful truth that the present systems do not have the capacity to effectively or efficiently fulfill the MHA/HAMP policy demands of the President and the law, let alone HARP, H4H and NON-HAMP demands. However, with time, the servicers do perform better, but is it enough to reach the goals of the program and the needs of society. New solutions and systems must be coordinated with new laws and state and federal guidelines to enhance the effectiveness and efficiency of these programs or processes. Conflicts in state, local and federal law, and conflicts in official regulations, guidelines and best practices, must be reconciled to avoid compounding inefficiency, confusion, delay, and unnecessary disputes.

HAMP & NON-HAMP LOAN MODIFICATION EFFORTS MUST BE STANDARDIZED, REFINED & SUPER-SIZED

A. Problems:

Inefficiency of process, lack of sufficient capacity, non-uniformity of results, and deficient communication processes must be corrected and reconciled before we can realize en masse loss mitigation or optimize the policy goals of President Obama. There is every expectation that the demand for en masse loss mitigation and modification solutions outweigh the actual solutions available, the eligibility parameters of the federal programs, and the capacity of the legacy banks, lenders and servicers to meet the President's (HAMP, HARP and H4H) program goals. To fashion solutions for non-uniform results and problems in communication and process, a list of the problems must be first enunciated, and then associated with its solution. The problem with identifying a list of problems is the data is not readily available from one source. However, through an unofficial accumulation of complaints, the following list, whether perceived or actual, and without judgment is used as an unofficial survey of problems, complaints, issues or arguments by consumers, consumer groups, HUD-Counselors, and some industry experts:

1. There is an unequal and unfair bargaining position between the borrower and the servicer [Borrowers are generally frightened, uninformed, ill prepared and demoralized. Borrowers complain that Servicers are holding all the cards and only disclosing partial information to borrower incrementally from first contact, intake, decisioning, options, etc. For example, how is Net Present Value (NPV), Hardship, or Imminent Default defined from Servicer to Servicer? Is either consistent among the servicers? What form is sent to borrower informing borrower of the criteria for NPV, Hardship, or Imminent Default? On the other hand, Servicers argue that to disclose to borrowers all information upfront would allow borrowers to 'game the system'; borrowers argue that keeping borrowers in the dark acts to create a coercive take-it-or-leave-it bargain that results in wrongful denials and or higher re-defaults because the borrowers true 'ability to pay' is not being addressed, etc.]

2. Servicers are not sending notices of WHAT documents or information is needed, received or missing during the process or incrementally; so the borrower is always in the kept-in-the-dark as to his/her pending evaluation status; impeding his/her ability to comply and causing wasteful or unfair treatment. The documents and information the borrower sent may not be the same documents or information the servicer is relying upon to make this life-changing important decision. This may be the case for completely innocent reasons, for reasons that the servicer, misplaced documents, transposed information verbally over the

phone, etc. Unless the borrower can see and verify the information, wrongful denials can go undetected.

3. Servicers are not sending a written notice with an explanation of WHY a borrower was denied [This is information necessary for the borrower to make an independent determination of whether there was a mistake, numeric transposition, error, wrongful denial or whether to request a correction of an error, reconsideration or to file an appeal [third party computer systems are being developed and or upgraded at this time which have the capabilities to map data to form Check-The-Box letter notices with personal borrower or loan level information. Manually mapping personal data will not be practical.]

4. Servicer representatives are lacking authority to effectively assist or approve borrowers; causing delays causing further borrower financial weakness

5. Servicers complain that borrowers are failing to gather and deliver documents within time deadlines, necessary to make eligibility determinations; leading to endless open-ended evaluation periods, loss and delay,

6. Borrowers claim Servicers are losing borrower documents over and over again, requiring borrowers to resend same to different fax numbers and different reps

7. Servicers are denying borrowers on inaccurate grounds; based upon lack of response or lack of documentation when in fact borrowers faxed documents and called the servicer numerous times [borrower is then shut out of the system and many are forced to seek an attorney enhancing litigation risks]

8. Servicers are denying modifications or not accepting applications if the borrower is current or not yet in default but the Supplemental Directive requires the following:

a. **Supplemental Directive 09-01** states at page 3 states: “A borrower that is current or less than 60 days delinquent who contacts the servicer for a modification, appears potentially eligible for a modification, and claims a hardship must be screened for imminent default. The servicer must make a determination as to whether a payment default is imminent based on the servicer’s standards for imminent default and consistent with applicable contractual agreements and accounting standards. If the servicer determines that default is imminent, the servicer must apply the Net Present Value test.”

9. Servicers are passing borrowers from one representative to another – all of whom have no authority to make decisions

10. Servicers are demanding payments before reviewing modification requests

11. Servicers are initiating foreclosures before reviewing or completing the modification process [DS News July 28, 2009]

12. Servicers are continuing the foreclosure process during the loss mitigation process or evaluation process; amounting to economic coercion to accept whatever deal is offered creating a fundamentally unfair bargaining position (even if borrower believes the deal is not completely within his/her ability to pay); causing emotional distress

13. Some Servicers are requiring that the borrower contact the foreclosure attorney directly, and the foreclosure attorney, sale-trustee or 3rd party service are requiring borrower to fill out its forms and submit confidential financial information to it at the same time as the servicer is requiring the borrower to fill out its different forms and submit same to the servicer overburdening the borrower with multiple sets of different financial forms with varying imposed short trigger deadlines; both acting as debt collectors coached as 'partners' in seeking a loss mitigation/modification solution for the borrower; conflicts, confusion, overshadowing and FDCPA/FTC issues abound; fundamental fairness has been lost

14. The process takes too long; borrowers are placed on 'hold' and have to repeat the same information over and over again; foreclosure sale or actual sale is instituted before servicer responds to modification or the refinance application;

15. Financial, employment, and medical circumstances change during the long delayed process requiring the solution to be varied but servicer systems are not receptive to changes in circumstances

16. Servicers are requiring borrowers to verbally commit to income, expense and debt information on the first phone call even if called a verbal estimate; but denying the borrower based upon deviations to actual numbers later obtained and delivered by borrower [borrowers don't have all their numbers at that finger tips and do need time to gather same]

17. HUD Certified Counselors and non-profits are necessary and critical for household budget and financial counseling, but they are not set up with the necessary computerization to run program/modification eligibility decisionings or to meet the high volume demand or to resolve high back end debt issues

18. Servicer systems generally do not recognize the Borrower's Professional Representative as prepared industry professionals that can enhance the efficiency of the process. They are placed in the general queue with no priority precluding enhancement of the communication process; also servicers continue to ignore the Borrower's Professional Representative's contact and mailing information and generally only send communications or notices to the borrower even after approving written representation authorization. This is generally also the case even when the Borrower's Professional Representative is a licensed attorney acting under written attorney client authorization. This creates violations of the attorney client rules and causes unnecessary duplication of information, and has the affect of informing the borrower that the servicer is not effectively recognizing the Borrower's Professional Representative.

19. There is a need for Senior Level Authority - Dedicated Professional-to-Professional Approval Contacts, for example:

Dedicated Professional to Professional Approval Contacts - HAMP Servicers will identify a senior level point of contact to communicate by phone, fax, and e-mail and who is authorized to grant approval of loss mitigation/modification proposals submitted under HAMP by any of (i) a HUD-certified housing counseling representative, (ii) the borrower's licensed attorney or (iii) the borrower's registered real estate broker (each, a "Borrower Third Party Professional Representative"). Servicer will supply "Borrower Third Party Professional Representative" a denial with explanation, approval, or request for more specifically identified information or documents, within 30 days from completed and submitted loss mitigation/modification proposal.

UPDATE HAMP:

IMMINENT DEFAULT UNDER HAMP

Imminent default is where a borrower is current or fewer than 60 days past due but claims an eligible financial hardship. Borrowers who claim a financial hardship must be screened for imminent default and HAMP using the servicer's standards for imminent default consistent with applicable contractual agreements and accounting standards. Factors to consider will include the borrowers' financial condition and the hardship(s), and the condition of the property. The Servicer must document the basis for its analysis and decision, and retain any documentation used to reach its decision.

HARDSHIP UNDER HAMP

Financial hardship may be one or more of the following:

Loss of job

Reduction or loss of income

Change in household financial circumstances

Recent or upcoming increase in monthly mortgage payment

Increase in expenses

Lack of sufficient cash reserves to pay mortgage and basic living expenses but excluding retirement accounts, emergency funds

Excessive monthly debt payments and overextension with creditors
Other reasons for hardship

HAMP SUPPLEMENTAL DIRECTIVES: The official list of Supplemental Directives located at https://www.hmpadmin.com//portal/programs/directives.html as of November 9, 2009 is as follows:

Supplemental Directives

Supplemental Directives are additional program guidelines developed specifically for servicers to provide additional guidance and clarify issues that may not have been fully addressed by previous guideline documents. The Supplemental Directives also provide good high-level and detailed information about the key Making Home Affordable programs. Some Programs may have multiple Supplemental Directives, if required. The Supplemental Directives that are currently available for review include:

Supplemental Documentation Frequently Asked Questions

These frequently asked questions clarify the Supplemental Directives issued in connection with the Home Affordable Modification Program.

- **Supplemental Documentation FAQs**
  Download Now
  Last updated: October 28, 2009

Supplemental Directive 09-01
Home Affordable Modification Guidelines

Additional guidance to servicers for adoption and implementation of the Home Affordable Modification Program for non-GSE mortgages.

- **Supplemental Directive 09-01**
  Download Now

Supplemental Directive 09-02
Home Affordable Modification Guidelines

Additional guidance to servicers regarding the collection of race, ethnicity and sex of borrowers involved in potential loan modifications under the HAMP.

- **Supplemental Directive 09-02**
  Download Now

Supplemental Directive 09-03
Home Affordable Modification Guidelines: Trial Period Guidance

Additional guidance to servicers for HAMP trial period and modification timing, as well as guidance for submitting loan-level data for processing during the HAMP trial period.

- **Supplemental Directive 09-03**
  Download Now

Supplemental Directive 09-04
Home Affordable Modification Guidelines: Home Price Decline
Protection Incentives

Additional HAMP guidance to servicers regarding incentives to modify loans in markets with declining home prices, including information on eligibility, calculating HPDP incentives, timetable for potential HPDP payments, and compliance.

- **Supplemental Directive 09-04**
  Download Now

Supplemental Directive 09-05
Introduction of the Second Lien Modification Program

Additional guidance to servicers for adoption and implementation of the Second Lien Modification Program (2MP) for non-GSE mortgages.

- **Supplemental Directive 09-05**
  Download Now

Supplemental Directive 09-06
Home Affordable Modification Guidelines: Data Collection and
Reporting Requirements Guidance

Additional HAMP guidance to servicers regarding the collection and reporting requirements of certain data elements.

- **Supplemental Directive 09-06**
  Download Now

Supplemental Directive 09-07
Home Affordable Modification Guidelines: Streamlined Borrower
Evaluation Process

Additional guidance to servicers for a streamlined HAMP borrower evaluation process.

- **Supplemental Directive 09-07**
  Download Now

Supplemental Directive 09-08

Home Affordable Modification Guidelines: Borrower Notices

Additional guidance to servicers related to the format, content and timing of notices that must be provided to borrowers requesting consideration for a HAMP modification.

Download Now

Supplemental Directives Discussion

Supplemental Directive 09-01, 09-07 and 08 are worthy of special mention. Supplemental Directive 09-01 remains the main body of guidance. It is referred to in most other directives. Supplemental Directives 09-07 and 08 are recent directives which in part, clarify and define duties incumbent upon the Servicer with respect to the borrower. Obligations to evaluate eligibility, and communicate to borrower in writing with certain and specific Notices are now contained in the directives.

Supplemental Directive 09-01 (See Program Documents)

In Supplemental Directive 09-01, the Treasury Department (Treasury) announced the eligibility, underwriting and servicing requirements for the Home Affordable Modification Program (HAMP). The directives states in part:

> On February 18, 2009, President Obama announced the Homeowner Affordability and Stability Plan to help up to 7 to 9 million families restructure or refinance their mortgages to avoid foreclosure. As part of this plan, the Treasury Department (Treasury) announced a national modification program aimed at helping 3 to 4 million at-risk homeowners – both those who are in default and those who are at imminent risk of default – by reducing monthly payments to sustainable levels. On March 4, 2009, the Treasury issued uniform guidance for loan modifications across the mortgage industry. This Supplemental Directive provides additional guidance to servicers for adoption and implementation of the Home Affordable Modification program (HAMP) for mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). Under the HAMP, a servicer will use a uniform loan modification process to provide a borrower with sustainable monthly payments. The guidelines set forth in this document apply to all eligible mortgage loans secured by one- to four-unit owner-occupied singlefamily properties. In order for a servicer to participate in the HAMP with respect to Non-GSE Mortgages, the servicer must execute a servicer participation agreement and related documents (Servicer Participation Agreement) with Fannie Mae in its capacity as financial agent for the United States (as designated by Treasury) on or before December 31, 2009. The Servicer Participation Agreement will govern servicer participation in the HAMP

program for all Non-GSE Mortgages. Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to the HAMP announcement issued by the applicable GSE. The HAMP reflects usual and customary industry standards for mortgage loan modifications contained in typical servicing agreements, including pooling and servicing agreements (PSAs) governing private label securitizations. As detailed in the Servicer Participation Agreement, participating servicers are required to consider all eligible mortgage loans unless prohibited by the rules of the applicable PSA and/or other investor servicing agreements. Participating servicers are required to use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties in order to carry out any modification under the HAMP. To help servicers implement the HAMP, this Supplemental Directive covers the following topics:
 HAMP Eligibility Underwriting Modification Process Reporting Requirements Fees and Compensation Compliance

HAMP Eligibility
A Non-GSE Mortgage is eligible for the HAMP if the servicer verifies that all of the following criteria are met:
 The mortgage loan is a first lien mortgage loan originated on or before January 1, 2009.
 The mortgage loan has not been previously modified under the HAMP. The mortgage loan is delinquent or default is reasonably foreseeable; loans currently in foreclosure are eligible. The mortgage loan is secured by a one- to four-unit property, one unit of which is theborrower's principal residence. Cooperative share mortgages and mortgage loans secured by condominium units are eligible for the HAMP. Loans secured by manufactured housing units are eligible for the HAMP.
 The property securing the mortgage loan must not be vacant or condemned. The borrower documents a financial hardship and represents that (s)he does not have sufficient liquid assets to make the monthly mortgage payments by completing a Home Affordable Modification Program Hardship Affidavit and provides the required income documentation. The documentation supporting income may not be more than 90 days old (as of the date the servicer is determining HAMP eligibility).
 The borrower has a monthly mortgage payment ratio of greater than 31 percent.
 A borrower in active litigation regarding the mortgage loan is eligible for the HAMP.
 The servicer may not require a borrower to waive legal rights as a condition of the HAMP.
 A borrower actively involved in a bankruptcy proceeding is eligible for the HAMP at the servicer's discretion. Borrowers who have received a Chapter 7 bankruptcy discharge in a case involving the first lien mortgage who did not reaffirm the mortgage debt under applicable law are eligible, provided the Home Affordable Modification Trial Period Plan and Home Affordable Modification Agreement are revised as outlined in the *Acceptable Revisions to HAMP Documents* section of this Supplemental Directive.
 The borrower agrees to set up an escrow account for taxes and hazard and flood insurance prior to the beginning of the trial period if one does not currently exist.

 Borrowers may be accepted into the program if a fully executed Home Affordable Modification Trial Period Plan is in the servicer's possession on December 31, 2012. The current unpaid principal balance (UPB) of the mortgage loan prior to capitalization must be no greater than:
O - 1 Unit: $729,750 o - 2 Units: $934,200 o - 3 Units: $1,129,250 o - 4 Units: $1,403,400

Note: Mortgage loans insured, guaranteed or held by a federal government agency (e.g., FHA, HUD, VA and Rural Development) may be eligible for the HAMP, subjeguidance **issued by the relevant agency.** Further details regarding inclusion of these loans in the HAMP will be provided in a subsequent Supplemental Directive. The HAMP documents are available through www.financialstability.gov.

See Program Documents _D11

Supplemental Directive 09-07 (See Program Documents)

Supplemental Directive 09-07, in part moves to standardize the borrower's evaluation forms and process, and requires the Servicer to respond to the borrower within 10 days from receipt of the borrower submission of the required information. It also requires the Servicer to complete its evaluation of borrower eligibility and notify the borrower of its determination within 30 days. If the Servicer determines that the borrower cannot be approved for a trial period plan, the Servicer must send written notice of same, and "consider the borrower for another foreclosure prevention alternative."

Supplemental Directive 09-07 states in part:

This Supplemental Directive represents an ongoing effort to improve process efficiency by updating the borrower underwriting requirements in Supplemental Directive 09-01 and introducing revised model documentation for the program. The objectives of these changes are to streamline the program documentation requirements and standardize the evaluation process that servicers use to make a HAMP eligibility determination. The significant changes described in this Supplemental Directive include:

 The creation of a standard **MHA Request for Modification and Affidavit form (RMA)** that incorporates borrower income and expense information, a revised Hardship Affidavit, the SIGTARP fraud notice and portions of the current Home Affordable Modification Trial Period Plan;
 Updated and simplified income documentation and verification requirements;
 The conversion of the current Trial Period Plan to a notice that does not require a borrower signature; and
 Standardized borrower response timeframes.

The changes under the heading “Borrower Income/Asset Documentation and Verification” in this Supplemental Directive are effective immediately for loans that are currently in a HAMP trial period where income has not yet been verified or for loans that are evaluated for HAMP on or after the date of this Supplemental Directive. The requirements under the heading “Servicer Response” in this Supplemental Directive are effective for loans that begin a trial period after the date of this Supplemental Directive. The new forms outlined in this document, with the exception of the RMA (the use of which is addressed below), may be utilized immediately but must be in use by March 1, 2010. Servicers should continue to use the Home Affordable Modification Cover Letter and Home Affordable Modification Agreement when providing the borrower with an agreement that outlines the terms of the final modification.

Borrower Income/Asset Documentation and Verification

The following information replaces in its entirety the guidance in Supplemental Directive 09-01, on pages 5 through 8, under the heading “Underwriting — Verifying Borrower Income and Occupancy Status.” The portions of that section that are in *italics* below are not changed from Supplemental Directive 09-01 but are included here for ease of reference. **Verbal and Verified Income Analysis**

There are two forms of Trial Period Plan Notices (TPP Notices) for use by servicers: stated income and verified income. They should be prepared as follows:

 Servicers may use recent verbal financial information obtained from the borrower (the term “borrower” includes any co-borrower) to assess the borrower’s eligibility for a trial period plan. A servicer may rely on this information to prepare and send to the borrower a TPP Notice (stated income), attached as *Exhibit C*. Following receipt of a completed and signed RMA and income or other required documentation, the servicer must verify the borrower’s financial information and eligibility, including completing a final Net Present Value (NPV) evaluation.

 As an alternative, a servicer may require a borrower to submit the RMA and all required
income or other documentation to verify the borrower’s financial information and eligibility prior to issuing a TPP Notice (verified income), attached as *Exhibit D*. A borrower’s income documentation may not be more than 90 days old as of the date that such documentation is received by the servicer in connection with evaluating a mortgage loan for HAMP. There is no requirement to refresh such documentation during the remainder of the trial period.

Trial Period Plan Notices

As described above, revised and updated TPP Notices are attached and replace the current cover letters and current Trial Period Plan. The TPP Notices describe the terms and conditions of the trial period plan and must be sent to borrowers as noted below in the section titled, “Servicer Response”. Borrowers are not required to sign or return the TPP Notice. Servicers should retain a copy of the

TPP Notice in the borrower file and note the date that it was sent to the borrower. Timely receipt of the first payment under the TPP Notice is evidence of the borrower's acceptance of the trial period plan and its terms and conditions. A borrower in a trial period plan who makes all required trial period payments, but does not sign and return current trial period plan prior to the end of the trial period, may receive a HAMP modification as long as the servicer has received all required trial period plan payments and all other HAMP-required documentation from the borrower, including a fully executed Home Affordable Modification Agreement.

Servicer Response

Within 10 business days following receipt of borrower financial information verbally or in a completed RMA, the servicer must acknowledge the borrower's request for HAMP participation by sending the borrower one of the following documents:

 The stated income TPP Notice -- if the servicer is evaluating borrower eligibility based on verbal income information and is prepared to offer the borrower a trial period plan.

 A written notice with information describing HAMP and including appropriate forms and a list of verification documents and a specific date by which documentation must be received -- if the servicer is evaluating borrower eligibility based on verified income information.

 If the servicer determines that a borrower cannot be approved for a trial period plan, the
servicer must communicate that determination to the borrower in writing and consider the borrower for another foreclosure prevention alternative.

Within 30 calendar days following the servicer's receipt of a completed RMA, Form 4506-T and all required income and other information (including all required documentation and either the borrower's tax transcript or tax return when using the verified approach), the servicer must complete its evaluation of borrower eligibility and notify the borrower of its determination as follows:

 If the servicer determines that the borrower is approved for a trial period plan, the servicer must either:

 Send a TPP Notice (verified income) to the borrower, or

 If the borrower is currently in a trial period plan pursuant to a stated income TPP Notice, send a written notice that the borrower has been approved for a HAMP modification pending timely receipt of all trial period payments.

 If the servicer determines that a borrower cannot be approved for a trial period plan, the servicer must communicate that determination to the borrower in writing and consider the borrower for another foreclosure prevention alternative.

See Program Documents _D12

Supplemental Directive 09-08 (See Program Documents)

The directive states in part:

Borrowers must be informed in writing of the reasoning for servicer determinations regarding program eligibility. This Supplemental Directive provides guidance to servicers of first lien mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to the related HAMP guidelines issued by the applicable GSE. This Supplemental Directive provides servicers with additional guidance related to the format, content and timing of notices that must be provided to borrowers requesting consideration for a HAMP modification (Borrower Notices). This Supplemental Directive is effective January 1, 2010; however, servicers are encouraged to implement this guidance as soon as possible.

A servicer must send a Borrower Notice to every borrower that has been evaluated for HAMP but is not offered a Trial Period Plan, is not offered an official HAMP modification, or is at risk of losing eligibility for HAMP because they have failed to provide required financial documentation.

Evaluation for HAMP. Supplemental Directive 09-06 announced additional data reporting requirements that are triggered when a mortgage loan is evaluated for HAMP. It provided that a mortgage is evaluated for HAMP when one of the following events has occurred:

- A borrower has submitted a written request (either hardcopy or electronic submission) for consideration for a HAMP modification that includes, at a minimum, current borrower income and a reason for default or explanation of hardship, as applicable; or
- A borrower has verbally provided sufficient financial and other data to allow the servicer to complete a Net Present Value (NPV) analysis; or
- A borrower has been offered a Trial Period Plan.

Whenever a servicer is required to provide data specified in Schedule IV (SD 09-06), the servicer must also comply with the requirements in this Supplemental Directive and send the appropriate Borrower Notice. The Not Approved/Not Accepted reason codes are specified in Schedule IV.

With the exception of the Notice of Incomplete Information, <u>all Borrower Notices must be mailed no later than 10 business days following the date of the servicer's determination that a Trial Period Plan or official HAMP modification will not be offered</u>. Borrower Notices may be sent electronically only if the borrower has previously agreed to exchange correspondence relating to the modification with the Servicer electronically.

Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with the language requirements of this Supplemental Directive.

 Non-Approval – for borrowers not approved for a Trial Period Plan or official HAMP modification, this notice must provide the primary reason or reasons for the nonapproval. The notice must also describe other foreclosure alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, short sale and/or deed in lieu or forbearance, and identify the steps the borrower must take in order to be considered for those options. If the servicer has already approved the borrower for another foreclosure alternative, information necessary to participate in or complete the alternative should be included. Whenever a nongovernment foreclosure prevention option is discussed, the notice should be clear that the borrower was considered for but is not eligible for HAMP.

W hen the borrower is not approved for a HAMP modification because the transaction is NPV negative, the notice must, in addition to an explanation of NPV, include a list of certain input fields that are considered in the NPV decision and a statement that the borrower may, within 30 calendar days of the date of the notice, request the date the NPV calculation was completed and the values used to populate the NPV input fields defined in Exhibit A. The purpose of providing this information is to allow the borrower the opportunity to correct values that may impact the analysis of the borrower's eligibility. If the borrower, or the borrower's authorized representative, requests the specific NPV values orally or in writing within 30 calendar days from the date of the notice, the servicer must provide them to the borrower within 10 calendar days of the request. If the loan is scheduled for foreclosure sale when the borrower requests the NPV values, the servicer may not complete the foreclosure sale until 30 calendar days after the servicer delivers the NPV values to the borrower. This will allow the borrower time to make a request to correct any values that may have been inaccurate.

 Payment Default During the Trial Period Plan – this notice informs the borrower that the borrower failed to make all the trial period payments by the end of the Trial Period Plan and is in default. The notice must also describe other foreclosure alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, short sale and/or deed in lieu or forbearance and identify the steps the borrower must take in order to be considered for these options. If the servicer has already approved the borrower for another foreclosure alternative, information necessary to participate in or complete the alternative should be included. Whenever a nongovernment

foreclosure prevention option is discussed, the notice should be clear that the borrower was considered for but is not eligible for HAMP.

 Loan Paid Off or Reinstated this notice confirms that the subject loan was paid off or reinstated and must provide the payoff or reinstatement date. If the loan was reinstated this notice must include a statement that the borrower may contact the servicer to request reconsideration under HAMP if they experience a subsequent financial hardship.

 Withdrawal of Request or Non-Acceptance of Offer this notice confirms that the borrower withdrew the request for consideration for either a Trial Period Plan or HAMP modification or did not accept a either a Trial Period Plan or a HAMP modification offer. Failure to make the first trial period payment in a timely manner is considered nonacceptance of the Trial Period Plan.

 Incomplete Information – this notice prov ides a list of the financial verification documents the servicer previously requested from the borrower but has not received. Servicers must develop and implement outreach procedures to obtain financial information from borrowers who do not provide verification documentation in a timely manner. As part of these procedures, the servicer must mail the borrower a notice listing all documents needed to complete the evaluation and a date by which the information must be received before the borrower becomes ineligible for HAMP. If the borrower fails to provide all required verification documents by the date provided, the servicer will declare the borrower ineligible for a modification and send the borrower a Non-Approval Notice. When used to determine if a borrower is qualified for a verified income Trial Period Plan, the servicer must send the notice to the borrower no earlier than 30 days after the date of the first written request for documentation and not less than 30 days before the servicer discontinues its evaluation for HAMP. When used in conjunction with a Trial Period Plan based on stated income, the servicer must send the notice not less than 30 calendar days prior to the expiration of a Trial Period Plan.

Attached is **Exhibit A which lists Model Clauses for Borrower Notices.** The model clauses are samples may be used to communicate the status of a borrower's request for a Home Affordable Modification coordinated with the Not Approved/Not Accepted reason codes in *Schedule IV* of Supplemental directive 09-06. Although optional, they illustrate the standard of practice necessary to be in compliance with the program.

See Program Documents _D13

NOTE RE SD 09-06 AND NEW DATA COLLECTION & REPORTING:

Beginning December 1, 2009, when a mortgage loan has been "evaluated" for HAMP, then certain data including identifying information, government monitoring data, NPV model input data and reason codes must be collected and reported to Fannie Mae, as program administrator. A mortgage loan has been "evaluated" for HAMP when one of the following has occurred:

 A borrower has submitted a written request (either hardcopy or electronic submission) for consideration for a HAMP modification which includes, at a minimum, current borrower income and a reason for default or explanation of hardship, as applicable; or
 A borrower has verbally provided sufficient financial and other data to allow the servicer to complete a Net Present Value (NPV) analysis; or
Note that—
 A borrower has been offered a Trial Period Plan
The following data must be provided as per the Schedules outlined in Supplemental Directive 09-06 which is available on www.HMPadmin.com :
 Schedule I titled "Identifying Information," Schedule II titled "Government Monitoring Data," and Schedule III titled "NPV Model Inputs" must be reported on the 4th business day of every month (the "Reporting Date"), beginning January 4, 2010, for each mortgage loan:

Notes

o That entered an official HAMP modification on or after December 1, 2009;
o That entered a HAMP trial period with a Trial Period Plan Effective Date on or after December 1, 2009;
o Evaluated for HAMP on or after December 1, 2009; Schedule IV titled "Not Approved/Not Accepted Reason Codes," must be reported for each mortgage loan evaluated for HAMP that, on or after December 1, 2009, did not enter a HAMP trial, fell out of a HAMP trial or, after the HAMP trial, did not result in an official HAMP modification. On the Reporting Date in the month following the month in which such a trigger event occurred, servicers must report to Fannie Mae a Reason Code as set forth on Schedule IV that appropriately describes the reason the mortgage loan was determined to be ineligible for HAMP.
The HAMP Reporting Tool can be accessed from the "Participating Servicer" section of www.HMPadmin.com (requires login)

UPDATE HAMP:

The HAMP Waterfall –

Generally, the Waterfall calculation must be done first, then the Net Present Value (NPV) calculation. The Waterfall seeks to get the borrower's payment as close as possible to 31% of the Gross Income (See SD 09-05R April 21, 2009). The Fannie Mae Worksheet would combine columns W, X, Y and AN to arrive at the new PITIAS (principal, interest, taxes, insurance, association fees, escrow shortages). The Servicer may do a modification under 31%, however it will lose HAMP incentives on that portion below 31%. The waterfall calculation is used for calculating the NPV, trial period payment, and the final modification term. The documents or information needed to calculate the waterfall include the current mortgage data, current income, PITIAS, existing suspense amount, and amortization schedule.

HAMP WATERFALL: A STEP BY STEP APPROACH:

To achieve the 31% target monthly mortgage payment amount (principal and interest), the servicer must orderly complete each step, one at a time, only going to the next step if needed to reach the target 31% monthly mortgage payment ratio. The general Waterfall procedure starts by:

(1) Calculating the new principal balance,
(2) Reducing the interest rate,
(3) Extending the term,
(4) Forbearing partial principal,
(5) And alternative steps.

Step One: Calculate New Principal Balance (NBP)

1. Capitalize delinquencies, accrued interest, escrow advances, and servicing advances to third parties by adding to loan balance (if allowed by applicable law), reduced by the estimated amount left in suspense.
    - A. To calculate the target monthly mortgage payment (P&I),
    - 1. Multiply monthly gross income by 31% (the "target monthly mortgage payment")
    - 2. Subtract monthly taxes, insurance and home owners association or condo dues from the Target Monthly Mortgage Payment
    - Note: Do not include borrower paid MI

Step Two: Reduce Interest Rate:

1. Reduce interest rate in increments of 1/8th or .125% down to a floor of 2%

Step Three: Extend Term:

1. Extend mortgage term by increments of 1 month, up to 480 months

Step Four: Principal Forbearance:

1. Provide principal forbearance only if needed to reach 31% target by increments of $50, $100 (Freddie Mac) to $500 each.
    a. If the servicer elects to modify a loan with principal forbearance that is NPV negative, the interest bearing (non-amortizing, unpaid principal balance excluding the deferred principal balloon amount) mark-to-market LTV ratio (current LTV based on new valuation) must be equal to or greater than 100%
    b. The forbearance amount is added to the end of the note as a balloon; it is not forgiven.

c. The principal forbearance amount is payable at the first transfer, refinance, sale, payoff of the interest bearing unpaid principal balance, or maturity of the loan.
d. There is no requirement to forgive principal under HAMP
e. References: Supplemental Directive 09-01 (p9-10), Fannie Mae Announcement 09-05R, Freddie Mac Chapter 65 (p18).

The target DTI is 31% but not below. The practical target should be a range between 31.49% as a ceiling, and 31% as a floor.

Next step is to proceed to the NPV test. Run the worksheet through the Fannie Mae web-enabled NPV program to see results (negative or positive, etc.)

The HAMP Net Present Value (NPV) –

Generally, the Net Present Value (NPV) test is required to determine borrower's eligibility. HAMP requires Servicers to use its Base Model 3.0 NPV. (See Program Documents: NPV Base Model 3.0 __D14). Lenders/ Servicers with over $40 billion in loans can use an approved custom NPV. The NPV test compares the net present value of expected economic results with a modification, versus the expected economic results without a modification. An NPV is positive if the economic value with the modification is greater than the value without the modification. A positive NPV (Run Successful), with a positive Waterfall Test requires the Servicer to proceed with the modification. If the NPV is negative, it is within the discretion of the servicer (or investor) but principal reduction is limited to 100% LTV. The Fannie Worksheet, Column P divided by AA equals the Mark to Market LTV.

An AVM (automated valuation model), BPO (a broker price) opinion, or appraisal may be used for the property valuation input. The AVM must have a reliable confidence level. The servicer must maintain detailed documentation of all data used as inputs to the NPV test, assumptions used, and the NPV test and results.

NPV Transaction Portal

The base model NPV is a web-enabled Fannie Mae model that Servicers must use by uploading a completed Worksheet through an LPS tool located at https://tportal.hmpadmin.com.

NPV CHART	NPV Positive	NPV Negative	Excessive Forbearance
GSE	Eligible	Eligible	Ineligible
NON GSE	Eligible	Discretion Requires Investor Approval	Ineligible

The HAMP Base Net Present Value (NPV) Model Specifications updated June 11, 2009 state:

> *Net Present Value of Modification* In general, NPV refers to the value today of a cash-generating investment – such as a bond or mortgage loan. When an investor is faced with a choice between two alternative investments – specifically, between the timing and amounts of the cash flows for each investment – the investor obviously prefers the choice that has a higher present value. In the context of a mortgage borrower who has become distressed, the investor – or a third party servicer, acting on behalf of the investor – faces a choice of whether to modify the mortgage or leave it as-is. Each choice generates expected cash flows, and the present values of these two cash flows are likely to be different. If the loan is modified, there is a greater chance that the borrower will eventually be able to repay the loan in full. If not, there is a higher likelihood that the loan will go to foreclosure, and the investor will absorb the associated losses. If the NPV of the modified loan is higher than the NPV of the loan as-is, a modification is said to be "NPV positive." The Making Home Affordable Program is structured to produce modifications that are more likely to test NPV positive, increasing the number of modifications that will be done and keeping more Americans in their homes. It does this, first, by lowering the probability that borrowers will default by making borrower payments more affordable and, second, by providing incentive payments that are added to cash flows received by lenders (or investors).
>
> *The Base NPV Model* The program supplies a base NPV model that any servicer may use to satisfy the requirement to modify all eligible loans that test NPV positive for modification. Large servicers – those having a book of business exceeding $40 billion – have some discretion to customize the base NPV model with respect to two important inputs, the expected default rates for loans that are not modified and the re-default rates for loans that are modified, as discussed further below. Both the base NPV model and a servicer's proprietary customized version will:
> 1. Compute the net present value of the mortgage assuming it is not modified.
> a. Determine the probability that the mortgage defaults.
> b. Project the future cash flows of the mortgage if it defaults and the present value of these cash flows.
> c. Project the future expected cash flows of the mortgage if it does not default and the present value of these cash flows.
> d. Take the probability weighted average of the two present values.
> 2. In the same manner, compute the net present value of the mortgage assuming it is modified,
> incorporating the effects on cash flows and performance of the modification terms and subsidies provided by the Home Affordable Modification Program.
> 3. Compare the two present values to determine if the HAMP modification is NPV positive. An NPV model used in the HAMP takes into account the principal factors that can influence these cash flows, including:
> 1. The value of the home relative to the size of the mortgage. 2. The likelihood that the loan will be foreclosed on. 3. Trends in home prices. 4. The cost of foreclosure, including:

a. legal expenses, b. lost interest during the time required to complete the foreclosure action, c. property maintenance costs, and d. the likelihood that a loan will be paid off before its term expires (prepayment probability).

FANNIE HAMP | FANNIE HARP

Information on FANNIE's programs, go to: https://www.efanniemae.com/sf/mha/mharefi .

FREDDIE HAMP | FREDDIE HARP

Information on FREDDIE's programs, go to:
http://www.freddiemac.com/singlefamily/makinghomeaffordable.html

Updates:

1. At the end of November 2009, the current Fannie data collector tool is being retired and replaced with a NEW HAMP REPORTING TOOL (LPS).
2. Freddie Mac will soon introduce a new Imminent Default Indicator (IDI) which will replace a portion of the imminent default evaluation currently in use.
3. Freddie Mac is adding an additional limit around the amount of partial principal forbearance that can be used to achieve the Target Payment. Effective for Mortgages for which the Servicer begins a new evaluation under HAMP on or after **December 1, 2009**, the following forbearance requirements apply:

   If partial principal forbearance is necessary to achieve the Target Payment (as described in Guide Section C65.6 (b) Step 5), the amount of partial principal forbearance is limited to the greater of (i) 30% of the unpaid principal balance of the Mortgage including the capitalization of arrearages or (ii) an amount resulting in a modified interest-bearing balance that would create a Mark-to-Market LTV Ratio equal to100% (collectively, the "Forbearance Limit").

   If the amount of partial principal forbearance necessary to achieve the Target Payment is greater than the Forbearance Limit, then the Mortgage is not eligible for modification under HAMP. For example, if the amount of forbearance is 35% of the unpaid principal balance including capitalization and the interest-bearing balance creates a Mark-to-Market LTV Ratio of less than 100%, the Mortgage is not eligible for modification. However, Servicers may forbear principal beyond the Forbearance Limit to achieve the Target Payment when determining the final amounts to be capitalized and preparing the Modification Agreement, provided the Mortgage met the partial principal forbearance and all other eligibility requirements, including the Forbearance Limit, at the time the Borrower was qualified for the modification based on verified income.

   If the result of the Treasury NPV test is negative, Servicers must continue to limit the amount of principal forbearance in accordance with current Guide requirements. That is, when the result of the Treasury NPV test is negative, the interest-bearing principal balance is limited to a Mark-to-Market LTV Ratio that is equal to or greater than 100%. (See section titled "NPV Requirements" below for additional limitations when the Treasury NPV result is negative.)

   Effective for new HAMP evaluations on or after **December 1, 2009**, we are updating our ts as follows:

   NPV eligibility rules for modifications *without* partial principal forbearance

If the proposed modification terms do not require partial principal forbearance and the Treasury NPV result is either positive or less than zero, but not less than negative $5,000, then the Servicer must process the modification. The Mortgage is not eligible for a modification under HAMP if the Treasury NPV result is less than negative $5,000 (i.e., negative $5,000.01 or lower).

NPV eligibility rules for modifications *with* partial principal forbearance If the proposed modification terms require partial principal forbearance to reach the Target Payment and the Treasury NPV result is positive, then the Servicer must process the modification provided the amount of forbearance does not exceed the Forbearance Limit. If the proposed modification terms require partial principal forbearance to reach the Target Payment and the Treasury NPV result is less than zero, but not less than negative $5,000, then the Servicer must process the modification provided the amount of partial principal forbearance does not create an interest-bearing balance with a Mark-to-Market LTV Ratio of less than 100%. If the amount of forbearance required to reach the Target Payment creates an interest-bearing balance with a Mark-to-Market LTV Ratio of less than 100%, the Mortgage is not eligible for a modification under HAMP. The Mortgage is not eligible for a modification under HAMP if the Treasury NPV result is less than negative $5,000 (i.e., negative $5,000.01 or lower).

HAMP TIPS & NOTES:

Waterfall / NPV

1. Generally, the Waterfall calculation must be done first, then the Net Present Value (NPV) calculation.

2. The Waterfall seeks to get the borrowers payment as close to 31% of the Gross Income as possible. The Servicer may do a modification under 31%, however it will waive its right to receive any HAMP incentives.

3. The number one mistake in running the HAMP NPV tool is failure of the mark to market LTV input. Column 3 divided by AA must Float to 5 decimal places.

4. The total monthly obligations of borrower includes all debt including all debt reported on the borrower's credit report.

5. Principal forgiveness is not required on GSE loans.

6. Servicer can re-run the NPV with changes numerous times.

7. Excessive Forbearance causes ineligibility for both GSE and non-GSE loans.

8. Excessive Forbearance causes ineligibility when request for forbearance amount exceeds market value.

9. Negative NPV causes GSE loan ineligibility.

10. Investors of non-GSE loans may give approval to proceed with modification even if Negative NPV.

11. Pursuant to SD 09-07 Social Security Income can be grossed-up to obtain eligibility.

12. Program changes are occurring all the time. New rules are expected, effective December 1, 2009.

13. Each of the agencies have its own version of HAMP. The rules differ. Effective 12/1/09, forbearance over 35% of UPB will be ineligible under Freddie HAMP. (See AllRegs Chapter 65 – Freddie)

14. Not enough income can cause excessive forbearance.

15. Lower FICO lowers the NPV amount.

16. The number of months past due changes the NPV.

17. The State (Zip Code) changes the NPV.

18. The Servicer must first evaluate and offer a HAMP modification (if eligible) over alternatives.

19. A borrower can be put into HAMP or a non-HAMP solution directly out of a successful forbearance-time agreement; but HAMP must be offered 1st if eligible.

20. Back End DTI (BE-DTI) is not taken into account for HAMP eligibility, but if BE-DTI is 55% of greater, the Borrower must be referred to a HUD Counselor.

21. The target DTI is 31% but not below. The practical target should be a range between 31.49% as a ceiling, and 31% as a floor.

22. If the NPV is negative, it is within the discretion of the servicer (or investor) but principal reduction is limited to 100% LTV. The Fannie Worksheet, Column P divided by AA equals the Mark to Market LTV.

23. Negative amortization is prohibited.

24. Support: Servicing_Solutions@fanniemae.com; Support@hmpadmin.com; hamp_intergration_team@fanniemae.com; 1800-Fannie-5; 1888-326-6435; 1800-Freddie; 1800-939-4469 (Non GSE Loans; Non Servicers).

HAMP INCENTIVES:

HAMP provides incentives to the Servicer, Investor, and Borrower for successful performance of first lien Trial modifications and borrower payments.

HAMP Compensation Matrix – First Liens

This matrix provides a summary of servicer, investor, and borrower compensation for the modification of first liens. Frequency, payee/beneficiary, amounts, and timing are provided, as well as the data attributes used for each calculation.

Download Now

Last Updated: October 26, 2009

Located at: https://www.hmpadmin.com//portal/programs/hamp_servicer.html

CHART: HAMP Incentive Matrix

Home Affordable Modification Program (HAMP) Compensation—First Liens

	Payment Name	Frequency	Payee/Beneficiary	Amount	Timing
1	Servicer Incentive Payment (paid for loans that successfully complete trial)	One time	Servicer/Servicer	$1,000	Paid in the first month of the official modification. Trial modification period must be successfully completed.
2	Current Borrower One Time Bonus Payment (paid for loans that successfully complete trial; loan must be current at the start of the trial period)	One time	Servicer/Servicer	$500	Paid in the first month of the official modification. Trial modification period must be successfully completed.
3	Current Borrower One Time Bonus Payment (paid for loans that successfully complete trial; loan must be current at the start of the trial period)	One time	Servicer/Investor (non-GSE Only)	**Must reduce monthly housing expense by at least 6%.** $1,500	Paid in the first month of the official modification. Trial modification period must be successfully completed.
4	Monthly Reduction Cost Share*	Monthly for first 5 years of the official modification	Servicer/Investor (Non-GSE Only)	The investor is paid, on a monthly basis: 50% of the difference between the P&I Payment at 38% DTI and P&I Payment at 31% DTI if the Front Ratio before modification is greater than or equal to 38% or 50% of the difference between the P&I Payment before modification and the P&I Payment at 31% DTI if the Front Ratio before modification is less than 38%.	Paid monthly beginning the month after the official modification effective date when the first official monthly report (OMR) is received.
5	Borrower Pay for Performance Success Payment	Accrued monthly (only in months borrower is current) and paid annually on the anniversary date of the trial modification Borrower is eligible for 5 years after starting the trial modification period.	Servicer/Borrower	**Must reduce monthly housing expense by at least 6%.** If such reduction is achieved, the borrower accrues, on a monthly basis the lower of $83.33 or 50% of the difference between the Monthly Housing Expense Before Modification and Monthly Housing Expense After Modification.	Accrue for number of months in the trial period in month 1 of the official modification to account for the time in the trial period. Amounts are accrued monthly if the OMR is received and the LPI Date Reported on the OMR is current. Paid annually in the month of the anniversary of first trial payment due date.
6	Servicer Pay for Success Payment	Accrued monthly and paid annually on the anniversary date of the trial modification Servicer will receive for 3 years after starting the trial modification period.	Servicer/Servicer	**Must reduce monthly housing expense by at least 6%.** If such reduction is achieved, the servicer accrues, on a monthly basis the lower of $83.33 or 50% of the difference between the Monthly Housing Expense Before Modification and Monthly Housing Expense After Modification.	Accrue for number of months in the trial period in month 1 of the official modification. Amounts are accrued monthly if the OMR is received. Paid annually in the month of the anniversary of first trial payment due date.

(* "Amount" corrected on 10/28/2009.)

10/28/2009

HAMP RELATED UPDATES:

1. eSignatures Now Accepted for HAMP Loan Modification Documents (See Program Documents eSignatures Now Accepted __D15) The document states in part:

> Electronic signatures, or "eSignatures/eSign," are now accepted for loan modifications under the Home Affordable Modification Program (HAMP) for all GSE- and non-GSE loans. eSignatures provide an alternative processing method for servicers and their eligible borrowers. Using this process, you can quickly and easily generate electronic documents, provide secure online access to borrowers for the review and signature process, and have access to the executed documents the same day.

2. Business Requirements for HAMP eSign Solutions (See Program Documents eSignatures Business Requirements __D16) The document states in part:

> Electronic Documents Any automa ted HAMP fulfillment platform must accept a combination of data and documents from servicers for distribution and/or eSign. Specific requirements and capabilities will differ by customer; some servicers may prefer to outsource document creation by providing only data for document generation, while others will want to upload completed documents generated in-house for electronic distribution and/or signature. Most servicers will likely require a combination of these approaches. Fannie Mae, as the HAMP program administrator, and Freddie Mac, see great value in the inherent capabilities of true electronic documents, and both support the efforts at MISMO to standardize electronic document definitions and data mapping. To that end, we require that the final eSigned modification document be a Category 3 SMARTDoc (v1.02) and be created using MISMO standard data definitions and data mapping. In addition: The "_Type" attribute in the document Header should reflect "LoanModification" for HAMP modification documents. The "_FormNumberIdentifier" attribute in the document header should reflect "3157e" for the HAMP Modification Agreement.

3. Fannie Mae Provides Electronic Appraisal Delivery Update -

> Fannie Mae extends the effective date for the delivery of electronic appraisal reports from March 1, 2010 to after July 1, 2010 (t/ba).

4. **Single-Family Seller/Servicer Guide Bulletin 2009-26** - Freddie Mac updated Home Affordable Modification Program (HAMP) with changes to forbearance and net present value requirements, effective December 1, 2009. Freddie Mac has also included important reminders related to HAMP Guide requirements.

5. **Fannie Mae Updates to the HAMP Program -** Fannie Mae changes to streamline program documentation requirements and standardizes the evaluation process HAMP.

6. **Fannie Mae Introduces Deed-for-Lease Program – 11/5/09** Fannie Mae announces the Deed-for-Lease Program (D4L) to allow qualifying borrowers to transfer the property through deed-in-lieu of foreclosure (DIL) and remain in their home as a tenant under lease for up to 12 months. Servicers can begin offering D4L immediately.

7**. Treating Unemployment Benefits as an Income Source New Unemployment Benefit Estimation Tool (Dept of Labor)** - As a result of new programs created by the American Recovery and Reinvestment Act such as the Making Home Affordable's Home Affordable Modification Program (HAMP), new loan modification options are available for borrowers. These programs have specific guidelines on how to treat a borrower's income, including unemployment income, for purposes of modifying an individual's mortgage loan. Under HAMP, for example, the servicer is to unemployment income will continue for at least nine (9) months . To help unemployed workers keep their homes, the Department of Labor has developed this tool to help mortgage companies quantify income from unemployment benefits for eligible individuals. More information on the tool and how it can be used can be found at: A New Tool to Project Availablility of Unemployment Benefits This tool will provide an estimation of potential weeks of UI eligibility and the total potential benefit dollars to be paid to the claimant. The UI program entitlement calculated includes Regular UI, Emergency Unemployment Compensation (EUC), and any Extended Benefits (EB) available in the state. This info located at: http://www.ows.doleta.gov/unemploy/ben_entitle.asp

For more info visit: https://www.hmpadmin.com/portal/index.html . Previously, it was a challenge for individuals receiving unemployment benefits to demonstrate projected income for a nine (9) month period. In normal economic times, most UI beneficiaries only receive up to twenty-six (26) weeks of benefits under the regular Unemployment Insurance (UI) program, or about six-and-a-half months of income. As a result of the economic downturn, Congress passed new provisions for extending and expanding UI benefits.

FHA-HAMP – HUD

FHA-H4H (HOPE for Homeowners Program)

MORTGAGEE LETTER 2009-43 dated October 20, 2009 states in part:

> The Helping Families Save Their Homes Act of 2009 amends the National Housing Act, providing for key changes in the HOPE for Homeowners (H4H) Program. The H4H Program is effective for endorsements on or before September 30, 2011. This Mortgagee Letter supersedes in their entirety Mortgagee Letters 2008-29, 2008-30 and 2009-03 and is effective for endorsements on or after January 1, 2010.
>
> **Key changes to the H4H Program:**
>
> - Borrowers are ineligible if their net worth exceeds $1,000,000,
> - Borrowers must not have defaulted on any substantial debt in the last 5 years,
> - The age of appraisal now follows standard FHA guidance,
> - Reduced mortgage insurance premiums,
> - Revised loan-to-value and debt-to-income ratios,
> - Maximum loan-to-value excludes the Upfront Mortgage Insurance Premium,
> - Eliminated requirement for obtaining most recent two year tax returns,
> - Eliminated special lender and underwriter certification,
> - Exit Premium replaces Shared Equity,
> - Shared Appreciation feature eliminated,
> - New note and mortgage replaces previous shared equity and shared appreciation notes and mortgages, and
> - Lenders must submit 5 test cases for pre-closing review by FHA.

See Program Documents – FHA-H4H MORTGAGEE LETTER 2009-43

MORTGAGEE LETTER 2009-23 July 30, 2009

MORTGAGEE LETTER 2009-23 July 30, 2009 states in part:

SUBJECT: Making Home Affordable Program:
FHA's Home Affordable Modification Loss Mitigation Option

On May 20, 2009, the President signed the "Helping Families Save Their Homes Act of 2009." This new law provides the Federal Housing Administration (FHA) with additional loss mitigation authority to assist FHA mortgagors under the Making Home Affordable Program (MHA). The MHA Program is designed to help homeowners retain their homes and to prevent the destructive impact of

foreclosures on families and communities. One key component of MHA provides homeowners the opportunity to reduce their mortgage payments by the use of a loan modification through the Home Affordable Modification Program. When initially introduced to the public, MHA excluded FHA insured mortgages, stating that FHA would develop its own standalone program. This Mortgagee Letter announces a new FHA Loss Mitigation option, the FHA-Home Affordable Modification Program (FHA-HAMP). FHA-HAMP will provide homeowners in default a greater opportunity to reduce their mortgage payments to a sustainable level. This Mortgagee Letter is effective August 15, 2009.

Basic Program Guidelines

The new FHA-HAMP authority will allow the use of a partial claim up to 30 percent of the unpaid principal balance as of the date of default combined with a loan modification. The objective of FHA-HAMP is to assist FHA mortgagors who are in default to modify their mortgage to an affordable payment. According to Mortgagee Letter 2000-05 and subsequent guidance, disposition options (pre-foreclosure sales and deeds-in lieu of foreclosure) are available immediately upon default, if the cause of the default is incurable, i.e. the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the mortgage obligation. To confirm if the mortgagor is capable of making the new FHA-HAMP payment, the mortgagor must successfully complete a trial payment plan. The trial payment plan shall be for a three month period and the mortgagor must make each scheduled payment on time.

See Program Documents – MORTGAGEE LETTER 2009-23 July 30, 2009

Attachment:

Guidance	FHA-Home Affordable Modification Program
Eligibility – Mortgagee	The Servicer of the modified FHA-HAMP mortgage must be FHA-Approved.

Eligibility – Mortgagors	The current mortgagor(s) on the existing FHA-insured single family mortgage must be identical to the mortgagor(s) on the HAMP mortgage, except as provided below. All changes in ownership due to death or divorce of the current owners must be supported by legal documentation. The existing FHA-insured mortgage is in default, but is not more than 12 full mortgage payments past due. A default is defined as 1 payment past due more than 30 days. For default calculation purposes, all months are determined to have 30 days. For example, a mortgage due for the July payment is in default on August 1st. The mortgagor(s) must be an owner occupant, have sufficient resources to make the payment on the HAMP mortgage and continue to occupy the home. A new mortgagor may be added to the HAMP mortgage, provided at least one existing mortgagor(s) is retained. The mortgagor must not have intentionally defaulted on their existing mortgage. (Note: Intentionally defaulted means the mortgagor had available funds that could pay their mortgage and other debts without hardship, but failed to pay).
Eligibility – Existing Mortgage	Must be a FHA-insured single family mortgage (1-4 units). Mortgages previously modified under HAMP are ineligible. There is no net present value (NPV) test for eligibility.
Eligibility – Maximum Mortgage Amounts	Not applicable.
Eligibility – Modified Mortgage	The existing FHA-insured mortgage must be re-amortized to a 30-year fixed rate mortgage, and must be modified in compliance with all FHA Mortgage Modification requirements, except those specifically modified under the FHA-HAMP program.
Property Eligibility	The property securing the FHA-insured property must be the mortgagor's primary and only residence; and only single family (1 to 4 unit) properties are eligible.
Interest Rate – Modified New Mortgage	The interest rate must be fixed and meet the guidelines in Mortgagee Letter 2008-21.
Current Loan to Value Requirements Mortgage	None.
Loan Purpose	FHA-HAMP mortgages are required to have a lower monthly principal and interest payment than the unmodified FHA-insured mortgage and are made without an appraisal. All existing subordinate financing must be subordinated to maintain the first lien priority of the HAMP mortgage. For more information, please see ML 2003-19.

Credit History	No minimum credit score required. (Credit report is only used to verify recurring debts.)
Seasoning Requirements on the Existing Mortgage	The first payment due date must be at least 12 months in the past, and at least 4 full mortgage payments must have been paid.
Property Valuation	No appraisal required.
Trial Modification	The Mortgagee must place the mortgagor(s) under a trial modification payment plan for the modified mortgage payment prior to completing the FHA-HAMP. The mortgagor(s) must have made the first three consecutive trial monthly mortgage payments on time before the FHA-HAMP can be completed, and a partial claim filed.
Documentation Requirements	The Mortgagee must obtain the following additional documentation: To be considered for any of the loss mitigation options, the mortgagor must provide detailed financial information to the Mortgagee. Every borrower and co-borrower must sign a hardship affidavit attesting to and describing the hardship. The document to be used is available for download at: https://www.hmpadmin.com/portal/docs/hamp_borrower/hamphardshipaffidavit.pdf The Department has no objection to situations where a cooperative mortgagor provides complete financial information either written or during a telephone interview. Regardless of how the mortgagor's financial information was secured, the Mortgagee must independently verify the financial information by obtaining a credit report (the credit report is not used for credit qualification but Mortgagees are to use for determining indebtedness), and any other forms of verification the Mortgagee deems appropriate.
Underwriting Requirements - General	No Credit Alert Interactive Voice Response System (CAIVRS) review is required, but HUD's Limited Denial of Participation (LDP) and General Services Administration (GSA) exclusion lists are still required checks for all mortgagors. FHA-HAMP processing and underwriting instructions are described below. • Where the mortgage is in default and no more than 12 full payments delinquent the Mortgagee combines a partial claim for up to 12 months of arrearages, foreclosure costs, and principal reduction with a modification. • Except for the new maximum partial claim amount calculation, the partial claim must meet the requirements of Mortgagee Letters 2000-05, 2003-19 and 2008-21. The mortgagor may not be charged any additional costs for receiving this loss mitigation workout option. On a cancelled foreclosure, Mortgagees are reminded that all such costs must reflect work actually completed to the date of the foreclosure cancellation and the attorney fees may not be in excess of the fees that HUD has identified as customary and reasonable for claim purposes. The financial analysis, Hardship Affidavit, and documentation supporting the decision to provide partial claim relief must be maintained in the mortgagee's claim review file.

Loss Mitigation – Priority Order	FHA-HAMP can only be utilized if the mortgagor(s) does not qualify for current loss mitigation home retention options (FHA Special Forbearance, Loan Modification and Partial Claim) under existing guidelines (ML 2008-21, 2003-19, 2002-17, 2000-05). To qualify for the FHA-HAMP, Mortgagees must utilize its loss mitigation actions using the aforementioned priority order.
Underwriting – Monthly Gross Income	The mortgagor's Monthly Gross Income amount before any payroll deductions includes wages and salaries, overtime pay, commissions, fees, tips, bonuses, housing allowances, other compensation for personal services, Social Security payments, including Social Security received by adults on behalf of minors or by minors intended for their own support, annuities, insurance policies, retirement funds, pensions, disability or death benefits, unemployment benefits, rental income and other income.
Underwriting – Front End Debt to Income Ratio	Front-End ratio is the ratio of PITI to Monthly Gross Income. PITI is defined as principal, interest, taxes and insurance. The Front-End ratio must be as close as possible to, but not less than, 31%.
Underwriting - Back End Debt to Income Ratio	The Back-End ratio is the ratio of the mortgagor's total recurring monthly debts (such as Front-End PITI, payments on all installment debts, monthly payments on all junior liens, alimony, car lease payments, aggregate negative net rental income from all investment properties owned, and monthly mortgage payments for second homes) to the mortgagor's Monthly Gross Income. This ratio must not exceed 55%. The Mortgagee must validate monthly installment, revolving debt and secondary mortgage debt by pulling a credit report for each mortgagor or a joint report for a married couple. The Mortgagee must also consider information obtained from the mortgagor orally or in writing concerning incremental monthly obligations.
Underwriting – Subordinate Financing	Subordinate liens are not included in the Front-End ratio, but they are included in the Back-End ratio.
Underwriting – Upfront Mortgage Insurance Premium	Not applicable.
Underwriting – Annual Premium	Remains the same.
Underwriting - Calculation of Maximum Partial Claim Amount	The maximum one-time only principal reduction on the modification is determined by multiplying the outstanding principal balance of the existing mortgage as of the date of default by 30 percent reduced by (i) arrearage amounts advanced to cure the default for up to 12 months PITI and (ii) allowable foreclosure costs. However, the actual principal reduction amount for a specific case shall be limited to such amount that will bring the mortgagor(s) PITI to an amount not to exceed 31 percent of gross monthly income. Whether or not there are previous Partial Claims for a given case number, the arrearage component of this and any previous Partial Claims cannot exceed the equivalent of 12 months PITI and allowable foreclosure costs. This 12 month PITI maximum is NOT affected by any payments that may

	have been made to reduce the partial claim mortgage balance.
Partial Claim Guidelines	No interest will accrue on the partial claim. The payment of the partial claim is not due until (i) the maturity of the HAMP mortgage, (ii) a sale of the property, or (iii) a pay-off or refinancing of the HAMP mortgage.
In Foreclosure Process	To ensure that a mortgagor currently in the process of foreclosure has the opportunity to apply, Mortgagees shall not proceed with the foreclosure sale until the mortgagor has been evaluated for the program and, if eligible, an offer to participate in the FHA-HAMP has been made. In the event that the mortgagor does not participate in FHA-HAMP, the Mortgagee must consider the priority order, outlined in "Requirements to Use FHA-HAMP" section of this Mortgagee Letter, prior to proceeding to foreclosure.
90 days Past Due	Ninety day past due mortgages must have been considered for all loss mitigation programs prior to being referred to foreclosure.
Escrows	Mortgagees are required to escrow for mortgagors' real estate taxes and mortgage-related insurance payments.
Unpaid Late Fees Waived	The Mortgagee will waive all late fees.
Credit Report	The Mortgagee will cover the cost of the credit report.
Mortgagee Incentives	Under FHA-HAMP, the Mortgagee may receive an incentive fee of up to $1,250. This total includes $500 for the partial claim and $750 for the loan modification. To receive the incentive payments, the Partial Claim and Loan Modification must meet the requirements of Mortgagee Letters 2008-21, 2003-19, 2002-17, 2000-05, and comply with instructions and requirements in this Mortgagee Letter and Attachment. Mortgagees may also claim up to $250 for reimbursement of title search and/or recording fees.
Mortgagor Cash Contribution	The Mortgagee may not require the mortgagor to contribute cash.
Disclosure	When promoting or describing FHA mortgage options Mortgagees should provide mortgagors with information designed to help them understand the mortgage terms that are being offered. Mortgagees also must provide mortgagors with clear and understandable written information about the terms, costs, and risks of the mortgage in a timely manner to enable mortgagors to make informed decisions. FHA requires Mortgagees to comply with any disclosure or notice requirements applicable under FHA regulations and state or federal law.

Fair Lending	Mortgagees under this program must comply with the Equal Credit Opportunity Act and the Fair Housing Act, which prohibit discrimination on a prohibited basis in connection with mortgage transactions. FHA mortgage programs are subject to the fair lending laws, and Mortgagees should ensure that they do not treat a mortgagor less favorably than other mortgagors on grounds such as race, religion, national origin, sex, marital or familial status (i.e., families with children under age 18 and pregnant women), age, disability, or receipt of public assistance income in connection with any loan modification. These laws also prohibit redlining.
Consumer Inquiries and Complaints	Mortgagees should have procedures and systems in place to be able to respond to inquiries and complaints relating to loan modifications. Mortgagees should ensure that such inquiries and complaints are provided fair consideration, and timely and appropriate responses and resolution.
Case/Mortgage Documentation	Mortgagees will be required to maintain records of key data points for verification/compliance reviews, in accordance with Handbook 4000.2 Rev-3, Paragraph 5-8and Handbook 4155.2, Paragraph 8.B.7.c. Servicing files must be retained for a minimum of the life of the mortgage plus three years, per Handbook 4330.1 Rev-5, paragraph 1-3 E. These documents may include, but are not limited to, mortgagor eligibility, Hardship Affidavit, and qualification and underwriting. Mortgagors will be required to provide declarations under penalty of perjury attesting to the truth of the information that they have provided to the Mortgagee to allow the Mortgagee to determine the mortgagor's eligibility for entry into the FHA–HAMP program.
Anti-Fraud Measures	Measures to prevent and detect fraud, such as documentation and audit requirements are described in Handbook 4060.1, Rev-2. Participating Mortgagees and Mortgagees/investors are not required to modify the mortgage if there is reasonable evidence indicating the mortgagor submitted false or misleading information or otherwise engaged in fraud in connection with the modification. Mortgagees should employ reasonable policies and/or procedures to identify fraud in the modification process.
Data Collection	Mortgagees will continue to be required to collect and transmit mortgagor and property data in order to ensure compliance with the program as well as to measure its effectiveness. Data elements may include data needed to perform underwriting analysis and mortgage terms, and loan level data in order to establish loans for processing during the trial period, to record modification details, and monthly loan activity reports.

News Release HUD No. 09-137

This page is located on the U.S. Department of Housing and Urban Development's Homes and Communities Web site at http://www.hud.gov/news/release.cfm?CFID=19510787&CONTENT=pr09-137.cfm&CFTOKEN=72165098 .

News Release HUD No. 09-137 Lemar Wooley (202) 708-0685 www.hud.gov/news/ For Release Thursday July 30, 2009

HUD SECRETARY DONOVAN ANNOUNCES NEW FHA-MAKING HOME AFFORDABLE LOAN MODIFICATION GUIDELINES

New FHA guidelines projected to help thousands avoid foreclosure per year
WASHINGTON - U.S. Department of Housing and Urban Development Secretary Shaun Donovan today announced the Federal Housing Administration (FHA) has implemented changes to its loan modification program to ensure consistency with the Obama Administration's Home Affordable Modification Program. By August 15, FHA borrowers will be able to significantly reduce their monthly mortgage payments by seeking a loan modification through their current mortgage company or loan servicer under the new FHA-Home Affordable Modification Program (FHA-HAMP).

"Today, we're bringing another important tool to the table to help struggling families who are desperate to keep their homes," said Donovan. "Tens of thousands of FHA borrowers will now be able to modify their mortgages in the same manner as so many others who are taking advantage of the Administration"s Making Home Affordable program. This is just the latest tool we are providing to help homeowners prevent foreclosures through the Making Home Affordable program. Earlier this month we announced an expansion of the Home Affordable Refinance Program to borrowers who are **up to 125 percent underwater**. Together, these actions will significantly increase the help available to homeowners."

The Helping Families Save Their Homes Act of 2009, signed into law on May 20, allows FHA to give qualified FHA-insured borrowers the opportunity to reduce their monthly mortgage payment by modifying the mortgage through FHA-HAMP. FHA released the program's implementation guidelines today. FHA expects all servicers to implement the changes by August 15. The program permanently reduces a family's monthly mortgage payment through the use of a partial claim, which defers the repayment of mortgage principal through an interest-free subordinate mortgage that is not due until the first mortgage is paid off.

FHA has used the partial claim option in the past, which allows a lender to advance funds on behalf of a borrower, to reinstate a delinquent loan that was up to 12 months delinquent. Now, this program will allow HUD to bring the borrower's payment down to an affordable level. **This will be accomplished by bringing the mortgage current, buying down the loan by up to 30 percent of the unpaid principal balance and deferring these amounts in a partial claim.**

FHA will pay an incentive to loan servicers for each FHA loan modified under this program. A Mortgagee Letter, along with detailed requirements for the FHA-Home Affordable Modification Program, was distributed to all FHA lenders today. The implementation of this program will further the Obama Administration's efforts to stabilize the housing market by helping homeowners to stay current on their mortgages and stay in their homes, therefore preventing the destructive impact of foreclosures on families and communities.

Making Home Affordable, a comprehensive plan to stabilize the U.S. housing market, was first announced by the Obama Administration on February 18. More than 200,000 trial loan modifications are already underway, tens of thousands of refinancings have closed, and informational mailings about the program have been sent to more than one million borrowers who may be eligible.

FHA borrowers who are experiencing difficulty making their mortgage payments should contact their loan servicer or HUD's National Servicing Center at (888) 297-8685 to

determine if they qualify for the FHA-Home Affordable Modification Program. The Mortgagee Letter, with detailed information about the program, is available on the HUD website. Non-FHA borrowers can find information about the Obama Administration's Making Home Affordable program at www.makinghomeaffordable.gov.

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HUD is the nation's housing agency committed to sustaining homeownership; creating affordable housing opportunities for low-income Americans; and supporting the homeless, elderly, people with disabilities and people living with AIDS. The Department also promotes economic and community development and enforces the nation's fair housing laws. More information about HUD and its programs is available on the Internet at www.hud.gov and espanol.hud.gov.

U.S. Department of Housing and Urban Development
451 7th Street, S.W., Washington, DC 20410
Telephone: (202) 708-1112 Find the address of a HUD office near you

Making Home Affordable Refinance Program: HARP

The official public website for the Making Home Affordable program directs borrowers to determine their initial eligibility for HARP refinances at the following url: http://makinghomeaffordable.gov/refinance_eligibility.html . The test is as follows:

Home Affordable Refinance

If you are a homeowner who is current on your mortgage payments but unable to refinance to a lower interest rate because your home value has decreased, you may be able to refinance.

Am I eligible for a Home Affordable Refinance? Answer these questions:

1. **Are you the owner of a one- to four-unit home?** ☐ Yes ☐ No

2. **Do you have a loan owned or guaranteed by Fannie Mae or Freddie Mac?**
   If you don't know, click here. ☐ Yes ☐ No

3. **Are you current on your mortgage payments?**
   "Current" means that you haven't been more than 30-days late on your mortgage payment in the last 12 months. ☐ Yes ☐ No

4. **Do you believe that the amount you owe on your first mortgage is about the same or less than the current value of your house?**

   You may be eligible if your first mortgage does not exceed 125% of the current market value of your home. For example, if your property is worth $200,000 but you owe $250,000 or less on your first mortgage, you may be eligible. The current value of your property will be determined after you apply to refinance. If unsure, click "Yes" for Question #4 and go to Refinance next steps.

YES, YOU MAY QUALIFY FOR A HOME AFFORDABLE REFINANCE

Based on your answers to all of the refinance eligibility questions, you may qualify for a Home Affordable Refinance. The next step is to gather the information you will need when you speak to a housing counselor or the servicer of your mortgage. This includes:

CHECKLIST

- Information about your mortgage, such as your monthly mortgage statement and
- Information about the monthly gross (before tax) income of your household, including recent pay stubs if you receive them or documentation of income you receive from other sources.
- Your most recent income tax return.
- Information about any second mortgage or home equity line of credit on the house.
- Account balances and minimum monthly payments due on all of your credit cards.
- Account balances and monthly payments on all your other debts such as student loans and car loans.

After you have this information, you should call your mortgage servicer or lender (the organization to whom you make your monthly mortgage payments) and ask about the Home Affordable Refinance application process. The number should be on your monthly mortgage bill or coupon book.

Please be patient

Lenders and servicers have started to implement the program and there may be a slight delay before they are prepared to process all applications

PRIVATE LABEL PROGRAMS | RE-DEFAULTS | SOLUTIONS:

First of all, it is important to note that each government agency (Fannie, Freddie, VA, FHA-HUD, etc.) has its **own version** of MHA/HAMP/HARP. However, most of these programs have been very slow to get started in terms of volume. This is mostly due to overly restrictive eligibility requirements, and understaffed government agencies. However, most programs are now ever-changing and being amended, and broadened, although not fast enough if the President's public policy goals are to be met. Moreover, it is widely expected that these government programs will fall far short of each of the program's goals.

As re-default rates continue to maintain its unacceptable 65-75% rate (Fitch's Semiannual Report: Data from Fitch Rated Servicers and First American Loan Performance; reported by John Clapp Servicing Management, 11/09), new methods, or parameters of loss mitigation eligibility must be set. Industry experts widely understand that the *borrower's ability to pay* must be determined on a *holistic monthly cash flow basis*, including front and back-end ratios. Resolution of excessive debt must be made a chore of the workout (and or as a condition to approval). Unfortunately, consumer debt forgiveness triggers a taxable event, not yet waived by Congress. Congress has waived forgiveness of mortgage debt for

a limited extended time, and it was paramount to do so in order to allow the borrower to avoid incurring an over-burden on monthly available cash flow. But excessive back-end consumer debt and income tax debt remain as impediments to achieving true affordability. The typical, greater than 6% payment reduction modification, is simply not producing sustainable loss mitigation solutions. The borrowers are over-burdened with consumer and tax debt, serious negative equity, and unemployment at a 26 year high (10.2%). Industry experts acknowledge that to lower the re-default rates substantially, the reduction in the borrower's monthly cash payment must exceed 20% (Diane Pendley, Managing Director, Fitch Ratings), and probably needs to approach 30%. Do achieve this, principal reduction and or forgiveness must be aggressively pursued (Mark Zandi, Chief Economist, co-founder of Moody's Economy.com). Other payment reduction devices must also be considered, including graduated payment plans, shared appreciation modifications and mortgages, insured and guaranteed shared appreciation mortgages that can sell the insured pieces into the secondary market, quarantined mortgages that do not produce 100% loss incurrence at the outset, etc. The author has created numerous solutions to these issues, and has publically explored principal reduction techniques with Wilbur Ross at the CMIS Executive Leadership Summit in DC (June 2008). For more info visit: www.CMISMortgageCoalition.org

At this time we face debilitating re-defaults, and highly restrictive government programs, with an anemic secondary funding market. If the borrower continues to have no where to turn for waiver of forgiveness of consumer and tax debt it, will continue to over- burden him/her, and preclude sustainable modifications. That further creates losses in the mortgage banking and credit markets, further impeding the resurgence of a sustainable private secondary funding market. Leaders must step up and create devices that substantially lower the borrower's monthly cash payment to obtain sustainable mortgages.

Most Notable Proprietary Program:

This year's most notable proprietary program comes from Bank of America. BofA has reached out and offered a select group of Option Arm borrowers, a pre-approved, aggressive, principal forgiveness modification. The author has reviewed one such example where the principal reduction was some 25%.

See Program Documents (Bank of America Principal Forgiveness Modification__D1)

Section III – Court Mediation Monitor Programs

III. New Required State Court Structured Foreclosure Mediation & Monitor Programs

A. Trends becomes the Norm

Trend: to extend in a general direction/to follow a general course/to veer in a new direction.

We have seen—across the country—the increased judicial scrutiny of foreclosure actions, additional notice requirements being established and moratoriums being announced. In the current climate where legislators and members of the judiciary are working to assist borrowers trying to keep their homes it is of no surprise that foreclosure mediation is spreading across the nation.

From the beginning of the foreclosure crisis, the issue of disconnect between the borrower and lender was constantly raised—by both lender/servicer and borrower alike. Judges heard it in arguments in their courtrooms and the legislators heard it in letters/phone calls. Both borrowers and lenders were claiming they were making diligent efforts to contact the other and alleging unresponsiveness to such attempts.

Foreclosure mediation, on its face, is an "enough is enough" type solution. Now both sides are put to task to talk to the other, to provide information, to provide answers—no excuses. And, while the success of the various mediation programs is being debated, more and more jurisdictions are developing such programs in an effort to get borrower and lender together to talk alternatives to foreclosure.

B. <u>State Court Foreclosure/Mediation Programs in Force</u>

Over the past two years, several States have instituted mediation programs to assist in bringing together during the foreclosure process the lender and the borrower to discuss options to foreclosure. While some are statewide programs there are a plethora of states where only certain municipalities/counties have instituted mediation programs. There is a lack of uniformity in the programs—yet, the goal is the same…to bring the lender and borrower together and, possibly, having such conversations result in one less foreclosure.

****It is important to note, that new programs are constantly being created and, it is not unheard of for current programs to be amended. It is recommended that one contact an attorney in the particular state/jurisdiction to get the most up to date information as to the mediation program nuances/status.

<u>Connecticut:</u>

Connecticut's statewide mediation program was established pursuant to statute (Public Act 08-176 and modified by Public Act 09-209). Under the program the borrower must be an owner/occupant; the premises must be a one to four family residential property located in

Connecticut; and the property must be the borrower's primary residence. The mediation program applies to all mortgage foreclosure actions with return dates of July 1, 2008 and after. However, the statute does have a sunset provision and no new mediation cases will be accepted on or after July 1, 2010.

At the commencement of the foreclosure action the lender is required to serve various notices upon the borrower relative to the mediation program. For qualifying homeowners who file an appearance in the foreclosure action mediation is mandatory. A meeting between the homeowner and lender with a mediator will be scheduled—the court sends the notice scheduling the mediation which must be concluded within 60 days of the return date for the foreclosure action. The action is not stayed; however, no judgment of foreclosure will be entered until the mediation period has expired.

***If the mortgagee is represented by counsel, counsel may appear at the mediation in place of the mortgagee so long as counsel has authority to agree to settlement and the mortgagee is available via telephone/electronic means during the mediation.

Delaware:

The statewide mediation program ("Residential Mortgage Foreclosure Mediation Program") was established in August 2009 via Administrative Directive of the President Judge of the Superior Court. It is applicable to foreclosure actions filed on or after September 15, 2009. The program is only available to those borrowers who own a one to four family residential property and reside in same as his/her primary residence. ***If the borrower had entered into a prior agreement via the program and defaulted he/she cannot participate again unless the lender agrees.

At the commencement of the foreclosure action, the plaintiff/plaintiff's attorney must send to the borrower, and post, a Special Notice Hotline Flyer (with Universal Intake Form, and Foreclosure Intervention Counseling Client's Checklist). The borrower must elect to enter the program.

The homeowner qualifies: after meeting with a HUD certified housing counseling agency and submitting a completed Universal Intake Form to the lender's attorney and the to the Delaware Volunteer Legal Services; and if the homeowner and counselor prepare a good faith proposal under which the borrower can reasonably pay his/her mortgage that does not account for more than 38% of the homeowners gross monthly income. The case will then be sent to mediation. If the 38% threshold cannot be met plaintiff/plaintiff's counsel may ask for the case to be scheduled for mediation. The lender must attend the mediation either in person or via telephone.

Florida:

Foreclosure mediation in Florida is not a statewide endeavor and is found in only certain counties via separate judicial orders. All judicially established programs apply to residential mortgage foreclosures of owner occupied homes. While there are many similarities between the programs, this situation is illustrative of jurisdictions attempting to help homeowners—but establishing programs that are not necessarily uniform in nature—even though they are in the same State!

9th Judicial Circuit: This quasi state court program was established via an Administrative Order in February of 2009. It requires initial notices be served upon the borrower at the time of service in the foreclosure action. One notice must advise the homeowner of the contact information for the bank's loan workout department.

The lender's attorney is also required to make contact with the borrower if he or she answered in the foreclosure. Contact must be in person or via telephone to determine if the borrower has the ability and/or willingness to work with the bank in loss mitigation efforts. If the borrower does not have the ability or does not wish to cooperate the attorney can file a Notice of Good Faith Communication and may be excused from the program. If the mortgagor does request mediation, it is the lender's responsibility to coordinate same. It should be noted that the cost of the mediation falls upon the plaintiff--$275.00 for 2 hours. Only half of that cost can be claimed and included within the judgment.

The representative of the lender who attends the mediation conference must have full authority to settle. If the representative is more than 25 miles from where the mediation is to take place he or she may appear by telephone—but the lender's attorney must be there in person. If the lender fails to appear or the representative does not have authority to settle the action may be dismissed or other sanctions imposed. The borrower must also make "good faith efforts to comply with reasonable requests for information" as to his/her financials prior to mediation. What "good faith efforts" means is not defined in the order.

11th Judicial Circuit: An Administrative Order effective as of May 1, 2009 established the 11th Circuit Homestead Access to Mediation Program (CHAMP) in collaboration with the Collins Center for Public Policy. This quasi state court program is mandatory. ***CHAMP is only available once per case for cases filed on or after May 1, 2009. Prior cases will be accepted on a case by case basis.

Upon the initiation of the foreclosure action, the plaintiff/lender must advise the Collins Center of the filing, provide contact information for the parties and must provide a certification that the Lender's representative in the mediation has full authority to modify the terms of the loan and to settle the matter. At that time the Collins Center will attempt to contact the borrower and has 30 days to make such contact. If no contact is made

the Collins Center is to advise the Court and lender/plaintiff and a final hearing or entry of summary judgment may occur.

If contact is made, the Collins Center refers the borrower to a HUD or National Foreclosure Mitigation Counseling Program agency for counseling and mediation is ultimately scheduled. The mediator is paid $350 from the $750 Cost Check provided by the lender earlier (there is a "refund policy" written into the order—in certain circumstances the fee can be returned to the lender).

Once mediation is scheduled the lender's attorney and the borrower must appear at the mediation. The lender must participate either in person or be available via telephone. If the borrower does not show or an agreement cannot be reached the matter may proceed to a final hearing or summary judgment. If an agreement is reached it shall be provided to the court and/or a stipulation of dismissal shall be filed. ***In the event any party breaches or fails to perform under a mediation agreement that court may impose sanctions.

19th Judicial Circuit and 1st Judicial Circuit: The quasi state court mediation programs for these counties were created by Administrative Orders (effective as of March 2009). Both Orders are extremely similar and both also utilize the Collins Center to facilitate the program. Mediation must be complied with prior to a default or summary judgment or a final hearing is set. Interestingly, these Orders apply to owner-occupied residences—which is defined as a residential property owned by the borrower and occupied by the borrower OR an immediate family member (spouse, child, parent, grandparent or sibling).

At the time the foreclosure complaint is the bank's attorney must certify the type of property that is being foreclosed on—is it an owner-occupied residence or not. "I don't know" is not an option. If it is an owner occupied residence, the bank's attorney must then further certify the identity of the bank or bank's representative that has full settlement authority AND that the attorney personally spoke with same to confirm this.

If the attorney certifies that the property is NOT an owner occupied residence then the foreclosure proceeds. If it is owner occupied, then, when the certification is filed, the bank is responsible for paying a mediation fee at the time of filing of $750.00. This fee may or may not be deemed a cost to be included within the final judgment if mediation is not successful.

Similar to the program above, the Collins Center is responsible for coordinating the mediation and the process above is followed. Upon scheduling the mediation conference, the parties, their counsel and a representative for the bank with full authority to settle must appear at the mediation session (though the representative for the bank may consult with other bank representatives via telephone). If the borrower does not appear the judge may allow the foreclosure to proceed. If the bank's

attorney or representative fails to appear the court may dismiss the action, order attendance at mediation or impose other sanctions.

18th Judicial Circuit: Foreclosure mediation was established via two Administrative Orders for Brevard County (February 2009) and Seminole County (September 2009), respectively. Mediation is mandatory in both. The initial requirements are that the borrower/owner resides in the residential property and the borrower must have filed responsive pleadings. It is then up to the attorney for the lender to coordinate the mediation prior to a judgment being issued in the foreclosure action. The fee for the mediation is $250 and is borne by the plaintiff/lender.

When scheduling the mediation it is the plaintiff's responsibility to give notice to all necessary parties (which include junior lien holders) and must identify the representative of the lender who will participate in the mediation and has the authority to settle. The lender's representative may participate via telephone provided this was included in the notice and a toll free number is provided. The representative's attendance, even if via telephone, must be continuous throughout the mediation session. ***The plaintiff's counsel must certify to the court the identity of the lender's representative, his/her position with the lender, and specifically certifying that he/she has full authority to settle without needing to seek authorization.

12th Judicial Circuit: A quasi-mediation program was established in this district via Administrative Order. The program is entitled the Homestead Foreclosure Conciliation Program and applies to cases filed December 1, 2008 and after. What the program requires is that lenders coordinate and participate in a telephone conference with willing borrower/owners.

When serving the complaint and summons the attorney for the lender must include a Notice to Homeowners Facing Foreclosure. It is the lender's responsibility to determine if the property is an owner occupied homestead. If there is any doubt or the status is not known, the Notice is to be provided. The Notice advises homeowners who wish to participate in the program to contact Legal Aid to see if they qualify for pro bono representation. The Notice also suggests that the borrower contact the attorney for the lender (though the onus is on the attorney for the lender to make such contact). Owners who do not qualify for Legal Aid can still participate.

Once the lender's attorney is contacted, the conference must be scheduled within 45 days of service of the Notice. The lender can have more than one person participate on the call—anyone who is necessary to discuss the loan and who is authorized to settle. Judgment in the foreclosure action will not be granted until an Attorney's Certificate of Compliance is filed with the Court advising that the Conference was held/attempted and the results, if any.

Indiana:

On July 1, 2009, Indiana Code 32-30-10.5 went into effect establishing foreclosure mediation. The Act does not apply if the property is not the borrower's primary residence or if the borrower defaulted on a previous foreclosure prevention agreement or if a Bankruptcy prohibits the settlement conference. A Notice must be included with the complaint which advises the debtor of his/her right to a foreclosure prevention settlement conference. It is then the responsibility of the borrower to notify the Court of his/her wish to participate—at which point the Court will schedule the settlement conference. It is Plaintiff's responsibility to provide the Court with a copy of the agreement reached or a notice advising an agreement was not reached.

Kentucky/Jefferson County:

The Residential Foreclosure Conciliation Program Foreclosure mediation was adopted in this County via a Court Order in March 2009. The lender/lender's attorney must include with the complaint served upon the borrower: a Notice about the program, what the homeowner needs to do to participate and a date for the conference. If the borrower wishes to participate, he/she will complete a financial packet and submit same to the Commissioner's office two weeks prior to the date of the conference—a copy must also be provided to the lender. The lender is then required to attend the conference. The person representing the lender must have decision making authority. The conferences are held at the Commissioner's office at which time the parties try to reach a settlement.

Maine:

Established by Public Law, Chapter 402 (June 15, 2009), this statewide mediation program was rolled out first in York County. By January 1, 2010, all other counties are to have a mediation program in place in compliance with the statute. The mandatory program applies to foreclosure actions filed against owners of one to four family, owner occupied (primary residence) residential properties.

Upon service of the complaint, the plaintiff/lender is required to also serve a notice which advises, in part, the mortgagor of his/her right to cure the default, an itemization of amounts due, a statement that the mortgagor may have options other than foreclosure, the address, telephone number and contact information for those who have the authority to modify the loan, the name address and telephone number for all HUD approved counseling agencies, and, if mediation is available, a statement that the mortgagor may request mediation. The lender is then required, within 3 days of providing this notice to the borrower, to file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection (DPFR, BCCP) information including, but not limited to: contact information of the mortgagor and when the written

notice was sent to him/her and at what address; the address, telephone number and contact information of a person who has the authority to modify the loan.

The "DPFR, BCCP" will then send, within 3 days, a letter to the borrower advising him/her of their rights and information with regard to the mediation program. If the defendant returns the notice or requests mediation or makes an appearance in the foreclosure action the court will refer the case to mediation. No judgment will be entered until a mediator's report has been completed. At the mediation hearing the lender (who has authority to settle) must attend but may do so via telephone or electronic means. If any party fails to attend or fails to make a good faith effort to mediate the court can impose sanctions.

New Jersey:

This judicially created program offers free mediation to borrowers who are facing foreclosure. While the program affects foreclosures filed on or after January 5, 2009, foreclosures filed before that date can be provided mediation upon motion by the homeowner. In order to qualify for the program, the property must be a 1 to 3 family residential property owned by the borrower that is being occupied by the borrower as his/her primary residence.

The program provides for three notices to be provided to the borrower at various intervals in the foreclosure action. The notice advises (in part) of the availability of free mediation, that mediation will not stop the foreclosure proceeding, provides contact info for HUD/NJHMFA certified agencies for help to complete a financial worksheet (which is provided with the notice) and that mediation will be scheduled once the completed financial worksheet and mediation request/recommendation form are returned to the Administrative Office of the Courts.

The first notice is served upon the borrower with the summons and complaint and will include the mediation request/recommendation form and foreclosure mediation financial worksheet. The second notice is sent by the Administrative Office of the Courts' Central Office 60 days after the complaint is filed. The third notice is attached to the notice of motion for judgment sent by the plaintiff's attorney.

Once a foreclosure mediation financial worksheet and request for mediation form are returned to the AOC's Office of Foreclosure by the homeowner, mediation will be scheduled. Same will take place in the county courthouses. A representative of the plaintiff/lender with authority to reach a mutually acceptable agreement must be present or available by telephone. The sheriff's sale will not take place while mediation is pending.

New Mexico:

This program was created by Administrative Order in the First Judicial District (Santa Fe, Los Alamos and Rio Arriba) and went into

effect on February 27, 2008. Settlement conferences are referred via Court Order. The Court may schedule same on its own or a conference may be requested by either party (the borrower must be the homeowner). The fee for the settlement facilitator is borne by the parties. The Court formulates a sliding scale fee schedule and, in the event of undue hardship, can relieve a party from part or that party's entire share of the fee.

Once referred, the court mails a Referral Order to the facilitator and all parties. The Order sets the deadline for the settlement conference (the actual date/time is set by the facilitator after contacting both parties). The plaintiff may appear by telephone if same resides or maintains an office outside of New Mexico. However, plaintiff's representative must have full authority to settle the matter.

Prior to the settlement conference both parties must provide an information form to the facilitator. Some of the information the plaintiff is required to provide includes, but is not limited to: copy of the note, mortgage and all assignments; notices to the borrower of the assignments; the identity of any investor that would need to be consulted prior to a settlement and their settlement guidelines; information about the loan (ie: original balance, current balance; current interest rate, etc.); what workout options will the lender consider.

Subsequent to the conference the facilitator must file a certificate of compliance with the court. No final order in the foreclosure will be issued until then. Each party must also complete an anonymous evaluation of the facilitator prior to the case being closed.

New York:

The statewide mediation program was created via statute on August 5, 2008. The law is applicable to subprime, high cost and non-traditional home loans originated between January 1, 2003 and September 1, 2008. The statute applies to borrowers that are natural persons. The debt must have been incurred primarily for personal, family or household purposes and applies to mortgaged premises that contain a structure or upon which a structure is to be built. Same is to be occupied as the borrower's principal residence.

For foreclosure actions commenced on or after September 1, 2008, a settlement conference must be held by the court (depending upon the court the mediation conference will be held before the judge, referee, clerk or other court personnel). This conference is to be scheduled by the court within 60 days of the filing of the affidavit of service on the mortgagor. At each of these conferences the Plaintiff must appear by counsel or in person. The party appearing must be fully authorized to settle the case. In most instances, the plaintiff must be available by telephone. While there is no formal stay of the proceedings implemented cases will not have a judgment entered until the mediation is complete.

Ohio:

For all intensive purposes, Ohio has a statewide mediation program that was promulgated by Ohio Supreme Court Justice Moyer in February of 2008. However, due to various limitations (mostly financial), to date only a portion of the 88 counties in Ohio have implemented a mediation program. As the mediation program was a model, the various counties have/can develop their own program with nuances.

The basic steps to the program include, but are not limited to: providing the borrower with a Request for Foreclosure Mediation form with the Summons and Complaint that must be sent to the Mediation Department by the borrower within 28 days of receipt; upon receipt of the mediation form the Mediation Department will then send a letter to the lender requesting that the Plaintiff/Lender's Mediation Questionnaire be completed and returned within 14 days; the court will then determine if mediation is appropriate and will advise the parties if mediation will or will not occur; if found to be appropriate, the Mediation Department will schedule the mediation and advise the parties of the date/time and instruct that the parties must appear in person (unless given permission by the mediator/court to appear by phone) and with authority to settle. The mediator will not force the parties to settle. If a settlement is reached, the agreement is memorialized on the record. If no settlement is reached the case continues on the trial docket.

Pennsylvania:

Similar to Florida, the mediation programs in this state have been created via the courts and are not statewide programs. Again, while there are many similarities between the established programs, there are nuances as well.

Alleghany County: This County's program was created by Administrative Order of the Court of Common Pleas and is effective as of January 12, 2009. It is applicable to foreclosure actions of residential owner-occupied properties. The lender's attorney is required to include with the foreclosure complaint, a special cover sheet and an "URGENT NOTICE". It contains a telephone number for the owner to call and advises that he/she will be put in touch with a housing counselor who will schedule a conference with the lender under the court's supervision.

It is the owner's responsibility to file a Certification of Participation form after meeting with the counselor. If the Order for the Conciliation Hearing is signed, the Conference will be scheduled by the court and a stay of the proceeding is put into place. Prior to the conference the owner is to submit a written proposal for resolution to the plaintiff's attorney. At the conference a representative of the plaintiff with authority to modify mortgages, enter into payment agreements or otherwise resolve the matter must appear or be available via telephone. The housing counselor is to submit a follow-up form advising as to the status of the loan

modification. Ultimately a decision is made as to whether to remove the case from the program, extend for another Conciliation Hearing or mark the case settled and discontinued.

Bucks County: This County's mediation program was created by Administrative Order in June 2009. The Order requires that the foreclosure complaint served upon the owner include a Certification Cover Sheet certifying that the property is an owner occupied residential property and an Urgent Notice which directs the owner to contact a hotline for assistance. Once the owner requests assistance/a conciliation conference the Court will issue an Order for Conference to all parties. A stay of the foreclosure will then be in place until at least 20 days after the conference. A representative of the lender is required to appear at the conference with authority to modify mortgages, enter into payment agreements or otherwise resolve the action. The Administrative Order is in effect until December 31, 2010 unless extended.

Lackawanna County: This mediation program was established by an amendment to the Lackawanna County Rules of Civil Procedure and went into effect on June 13, 2009. With service of the foreclosure summons a "Notice of Residential Mortgage Foreclosure Diversion Program" must be included. The foreclosure is then stayed 60 days so that the borrower has an opportunity to see if he/she qualifies for the court supervised conciliation conference program.

If qualified, the borrower files a Request for Conciliation Conference form with the Clerk of Judicial Records and serves it upon the lender's attorney. If a borrower is not represented by counsel, he/she must meet with a housing counselor and complete a financial worksheet prior to filing the Request. If a borrower is represented by counsel no such meeting is necessary so long as the borrower's attorney completes the financial worksheet and files the Request.

The Court Administrator will then issue a Case Management Order and a conference shall be scheduled. 14 days prior to the conference the borrower must serve on the plaintiff/its attorney a copy of the financial worksheet. Failure to do so will result in the stay being lifted and the case will be removed from the program. All conferences are held on the last Friday of the month before the presiding judge and all parties (and attorneys) must attend. An authorized representative of the lender must attend or be available via telephone and must have authority to reach a mutually acceptable resolution. Prior to a property being listed for Sheriff's Sale the plaintiff's attorney must file an affidavit attesting that either 60 days has elapsed from service of the original Notice and the defendant has not opted to participate or that both parties have participated in the diversion program but a resolution was not reached and no further conferences are scheduled.

Philadelphia County: The Residential Mortgage Foreclosure Diversion Pilot Program was created by Joint General Court Regulation No. 2008-1 signed on April 16, 2008 and went into effect immediately. This program covers owner occupied residential properties and a Conciliation Conference must be scheduled before the Sheriff can sell. The program terminates December 31, 2009 unless extended.

The program requires that the cases filed indicate Case Type "3D-Mortgage Foreclosure-Owner Occupied Residential Premises" on the Civil Cover Sheet. A Case Management Order will then be issued and given to the Plaintiff upon the filing of the case to be served upon the borrower. This Order will schedule the conference and requires the attendance of the parties. It also directs the borrower to call a hotline number so as to be directed to a housing counseling agency—the borrower is to cooperate with the housing counseling agency and provide all necessary financial information which is to be provided to the lender. The entry of judgment is delayed until after the date of the Conciliation Conference. A representative of the lender with authority to modify mortgages, enter into payment agreements or otherwise settle the matter must attend the conference or be available via telephone. At the conclusion of the conference, an Order shall be issued memorializing the results of the conference.

********NON-STATE COURT MONITORED PROGRAMS********

While the majority of programs are administered (in whole or part) by state courts there are a number of mediation programs that have been established (particularly in non-judicial states) where the courts are not involved in the mediation process:

California:

Mediation efforts were enacted on February 20, 2009, when Governor Schwarzenegger signed into law California Civil Code Section 2923.5 and Section 2923.52-53.

Under Section 2923.5 the mortgagee (or its trustee or agent) may not file a notice of default until 30 days after contact is made or 30 days after satisfying the due diligence requirements. The statute provides for the mortgagee, et al., to contact the borrower in person or by telephone to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The borrower must be advised that he/she has the right to a subsequent meeting (within 14 days) and must be provided with a toll free number to find a HUD certified housing counseling agency.

The mortgagee (or its trustee or agent) is then responsible for filing a notice of default stating that it contacted the borrower, tried diligently to contact the borrower or the borrower surrendered the property to the mortgagee. Due diligence is explicitly laid out in the statute and includes: first class letter, telephone calls to primary number on the file; certified

letter; and posting a prominent link on the homepage of its internet web page. The statute applies to loans made from January 1, 2003 to December 31, 2007 that are secured by residential real property and are owner occupied residences. The statute is only in effect until January 1, 2013 unless modified.

The California Foreclosure Prevention Act (Section 2923.52-2923.53) modifies the foreclosure process to provide additional time for borrowers to workout loan modifications. The statute requires an additional 90 day period beyond the period already given to be provided to the borrower before a Notice of Sale can be served in order to allow the parties to look into a loan modification of certain loans (the loan is a first mortgage recorded during the period of January 1, 2003 to January 1, 2008 on residential real property; the property is occupied by the borrower as his/her principal residence; the notice of default has been recorded on the property). The statute is in effect until January 1, 2011 unless repealed or extended. There is an exception in the statute for mortgage loan servicers that have implemented a comprehensive loan modification program that meets the requirements of the section (the requirements are specified in the statute). The exempted mortgage loan servicers can be found on the California Department of Corporations website.

Michigan:

This statewide program was created via statutes signed into law on May 20, 2009. Same is effective as of July 5, 2009 and is repealed as of July 5, 2011. Under the statute, lenders must notify borrowers of foreclosure via mail. This notification must include the name of an individual at the lender's office who has the ability to modify the loan and a list of approved housing counselors. Once the borrower has met with a housing counselor, a meeting will be set up with the lender to attempt to work out a modification of the mortgage loan. At this point, the foreclosure cannot proceed for 90 days from the date of the initial notification.

Nevada:

Nevada's Foreclosure Mediation Program (FMP) was established by Assembly Bill 149 in February of 2009 and applies to owner occupied residential properties where foreclosure notices are filed on or after July 1, 2009. The foreclosure notice is to include a form to request mediation. The borrower will have 30 days after being served to notify the trustee and FMP Administrator of his/her election to participate—the trustee will then notify all parties with an interest in the property.

If mediation is requested, both the borrower and lender must submit to the Administrator a non-refundable mediation fee of $200 ($400 total). Once all forms and fees are received, the Administrator will assign a mediator. Seven days prior to the mediation the homeowner must submit a financial statement and housing affordability worksheet, and a settlement proposal. At the mediation the representative for the lender

must bring the original/certified copy of the note, the original/certified copy of the Deed of Trust, the original/certified copy of any assignments, a copy of the most current appraisal, an estimate of the short sale value of the home and the lender must show the method used to determine if the homeowner is eligible for a loan modification.

Oregon:

The current mediation process was established via statute SB 628 which went into effect on its passage and contains various sunset dates for different provisions. The trustee for the lender is required to send the homeowner a notice which advises how to stop the foreclosure process, the amount needed to bring the loan current and sources for counseling/advice. The notice should include the trustee's contact information with an individual contact who can discuss the payment and loan term negotiation/ modification options. The numbers must be toll free (unless there is an exception).

Additionally, the trustee/lender must send a form to the homeowner advising they have 30 days to return the form to request a loan modification and/or meeting with the lender. The lender then has 45 days to advise the homeowner if he/she qualifies for a modification. If the homeowner requested a meeting with the lender the meeting must be with a representative who has the authority to make loan modification decisions (it can be in person or by telephone). The meeting must take place before the lender makes a decision on the loan modification. Ultimately, the lender must file an affidavit in the county where the property is located that states that the process was followed. The homeowner must receive a copy of the notice at least 25 days prior to the trustee selling the home.

The foreclosure notice and loan modification process are in effect from September 28, 2009 to January 2, 2012. After said date only the foreclosure notice is required.

Wisconsin--Milwaukee:

The Milwaukee Foreclosure Mediation Program was established pursuant to Milwaukee County Chief Judge Directive 9-14 and is being administered by the Marquette University Law School. It applies to borrowers who are owner-occupants of residential properties with 4 units or less. A notice advising of the availability of mediation is to be attached to the foreclosure summons and complaint. Mediation must then be requested by either the borrower or lender (15 days from the date of the service of the summons and complaint) and both the borrower and lender must agree to the mediation. Mediation will then be scheduled 45-60 days after the request for mediation is received. The cost is a non-refundable $100 mediation fee charged to both the homeowner and lender. There is no stay of the foreclosure proceeding.

C. State Laws & Judicial Orders

As noted above, the mediation programs that have been established have been enacted via judicial order or legislative statute. While a brief synopsis of some of these programs were given above, it is important to note that many of the orders/statutes have many more details than mentioned here. Annexed are copies of the various statutes and/or judicial orders which have established mediation programs (all were mentioned above).

California: California Civil Code Section 2923.5 and Section 2923.52-53.

Connecticut: Public Act 08-176 and then modified by Public Act 09-209. The Act can be found via the following link: http://cga.ct.gov/2009/ACT/PA/2009PA-00209-R00SB-00948-PA.htm. Annexed is a copy of the information provided on the State of Connecticut Judicial Branch and includes copies of some of the Notices required per the statute.

Delaware: Administrative Directive of the President Judge of the Superior Court of the State of Delaware No.2009-3. A copy of the Directive and some of the Notices/Forms required are annexed.

Florida:
9th Judicial Circuit: Administrative Order No. 2009-02.***
11th Judicial Circuit: Administrative Order No. 09-08.***
19th Judicial Circuit: Administrative Order No. 2009-01.
1st Judicial Circuit: Administrative Order No. 2009-18.***
18th Judicial Circuit: Administrative Order for Brevard County (09-14-B Amended) and Seminole County (09-09-S Amended).
12th Judicial Circuit: Administrative Orders 2008-14.1 and 2008-15.
*** Also annexed is a copy of the required initial Notice.

Indiana: Indiana Code 32-30-10.5.

Kentucky/Jefferson County: 30th Judicial Circuit Order. Also included is a copy of the Notice provided by the Court.

Maine: Public Law, Chapter 402.

Michigan: Michigan Compiled Laws Section 3205, 3205(a)-3205(e).

Nevada: Assembly Bill 149.

New Jersey: Judicially created. A copy of program outline as provided by the Administrative Office of the Courts is annexed. Also annexed are copies of some of the required notices and forms.

New Mexico: Administrative Order 2008-01 in the First Judicial District. Copies of some of the required notices/forms are also included.

New York: Bill 10817/S.8143-A.

Ohio: Established by Ohio Supreme Court Justice Moyer in February of 2008. A copy of the program model is annexed.

Oregon: Senate Bill 628.

Pennsylvania:

Alleghany County: Administrative Order of the Court of Common Pleas/AD-2008-535-PJ. ***

Bucks County: Title 255-Local Court Rules/Administrative Order No. 55. ***

Lackawanna County: Title 255—Local Court Rules/Repeal and Adoption of Lackawanna County Rules of Civil Procedure: No. 94 CV 102. ***

Philadelphia County: Joint General Court Regulation No. 2008-01. A copy of the Regulation is annexed. To view the full document inclusive of Administrative Orders and sample notices/forms click on the following link: http://courts.phila.gov/pdf/forms/civil/Residential-Mortgage-Foreclosure-Diversion-Pilot-Program-Materials.pdf

*** Copies of sample Notices/Forms are also included.

Wisconsin--Milwaukee: Milwaukee County Chief Judge Directive 9-14.

D. Related Pending Legislation

1) REED Bill/S. 1731—Preserving Homes and Communities Act of 2009

Per the press release dated September 30, 2009, Senator Reed introduced the legislation in an attempt to help keep families in their homes and to protect communities from deterioration. The legislation, if passed, will require that "…qualified homeowners are evaluated for and offered loan modifications; establishing a new mortgage payment assistance program; and **incentivizing states and local governments to create strong mediation programs, which allow homeowners and servicers to meet face to face to try to find an alternative to foreclosure.**" (Emphasis added) A copy of the proposed statute is annexed.

The proposed legislation authorizes $80million in competitive federal matching funds for states and localities to establish free, mandatory (for both the lender and borrower) mediation programs. There is no mention of what types of property the program must apply to or whether the borrower must be an owner occupant. It does provide for the

inclusion of junior lien holders in the mediation process (though same is not mandatory) and stays any junior lien holder proceeding while the mediation is taking place. The program that is ultimately established may be statewide or local (if the State determines a high need in a particular location due to the number of foreclosure in that locale or "other characteristics" that contribute to the number of foreclosure in the locale).

2) Massachusetts

There is legislation currently pending in the legislature—House No. 4003—which was filed on February 12, 2009 (a copy is annexed). The bill would establish a mandatory, statewide mediation program. It would be applicable to residential real property with 4 or less units and occupied by the borrower. Courts would advise the borrowers of the program and, if requested by the borrower, the lender is required to participate. Any foreclosure proceeding would then be stayed. Per the proposed language, the mediation should take place no later than 10 days after requested by the borrower and shall concluded not more than 60 days after the return date of the foreclosure action. ***Within 5 days after the mediation conference, the mediator is to make a determination if mediation is beneficial to the parties and file his/her findings with the court (and provide to both parties). If yes, the mediation will continue. If not, the mediation period automatically terminates.

3) New York

As noted above, New York currently has a statewide mediation program in place. There is pending legislation in the New York Assembly (A08236) to extend the scope of the program (a copy of the proposed legislation is annexed). Currently, mandatory settlement conferences are only required in the case of subprime, high cost or non-traditional loans. The proposed legislation would expand the mandatory settlement conferences to include borrowers of all home loans.

4) Wisconsin

As noted above, Wisconsin currently has a mediation program in place that was established judicially and is being carried out by Marquette University Law School. Under the proposed legislation, upon the commencement of a foreclosure the lender must inform the borrower of the right to request mediation (***There is an exception to this right if the borrower has participated in mediation within the past 2 years or agreed to a loan modification with the same lender on the same property within three years).

If requested the foreclosure action is stayed until the mediation process is complete. The parties are required to attend the mediation session and work towards a resolution in good faith. For a mortgagee, good faith includes (amongst other things) designating a representative with authority to fully settle/mediate the matter. ***The cost of the

mediator may be added to the mortgage loan payments. The proposed legislation would be applicable to first or second mortgages given on residential real property (1-4 family dwelling) owner occupied (or to be occupied) by the borrower.

E. Conflicts in Law, Preemption Issues re: Federal, State and Local Laws

Per Article VI, Section 2 of the US Constitution (also known as the Supremacy Clause), the "…Constitution, and the Laws of the United States…shall be the supreme Law of the Land." Certain issues are of such a national scope that federal law will preempt State law that is inconsistent. And, it is not so easy to always determine preemption. Sometimes, Congress makes it easy and clearly states "we hereby preempt". When such clear language is missing from the statute, and there is a conflict, that is when it is up to the judiciary branch to determine whether there is preemption or not. Similarly, conflicts between State and local laws face the same analysis.

At this point, the Federal government has not thrown its hat into the ring and taken over foreclosure mediation. The proposed Reed Bill (S. 1731) does not appear to be a concern re: preemption. It is providing funds to State governments without mediation programs in place but it does not appear to want to get more involved than that. Even on the State and local level…there has yet to be any real conflict between the State and local governments as to the instituting of foreclosure mediation programs.

F. Common Principles and Requirements

As discussed earlier, there is no true uniformity in the various mediation programs that have been established. With that being said, it is clear from the above that many of the programs contain principles and/or requirements that mirror or are similar those found in other programs. The language may not be exactly the same or they may be titled differently, but the similarities are unquestionable:

1) Stay of the foreclosure proceeding

Most of the mediation programs in place provide for additional time and/or a stay to the foreclosure proceedings. As noted in several of the synopsis above, many times a proceeding cannot be taken to judgment until the mediation is completed. In some cases, the proceedings are at a standstill until the mediation is resolved one way or another.

2) Preliminary Notices

The majority of programs require that a preliminary notice be mailed or served upon the borrower at the commencement of the foreclosure proceeding (whether judicial or non-judicial). In most instances, this is the responsibility of the lender or the lender's attorney. Again, while there is a lack of uniformity as to the notices themselves,

there are many similarities (a number of notices contain a hotline number for the borrower to call in order to get counseling).

3) Appearance by Both Parties

The idea behind mediation is to bring the parties together to discuss resolution to the foreclosure…even if that means allowing the foreclosure to be completed. In order to achieve this goal, the majority of mediation programs require that both the borrower and lender appear at the mediation conference. Yet most programs have taken into account the huge burden it would be to have representatives from the lenders at every mediation conference. Therefore, in most cases, the lender's attorneys are required to appear and the lender's representative can appear (or be available) via telephone. However, one common theme…whether in person or via telephone…the lender's representative must have the authority to settle the matter.

4) Applicability

The majority of programs (in one way or another) limit the scope of the program to borrowers that own and occupy the premises subject to the foreclosure. Additionally, most programs limit the scope to residential one to three/four family properties.

G. Unusual Principles and Requirements

1) Occupancy Certification

In some of the Floridian counties, the bank's attorney must certify the type of property that is being foreclosed on—is it an owner-occupied residence or not. "I don't know" is not an option. There are quite a few challenges and/or concerns with this requirement. First and foremost is that the foreclosure attorney generally does not have personal knowledge of this. He/she will be relying upon the lender or process server or property preservation agent to provide this information. And, what if the occupants are uncooperative or are untruthful? Should a lender be prejudiced (in not being able to proceed) because occupants will not provide information or accurate information as to who resides in the premises?

2) Fees

While many programs are "free" a number do have costs associated to them. What is interesting is that, in most cases, this cost is born by the lender. In those instances where the borrower must share in the cost of mediation there is the ability to have the fees waived due to hardship. Additionally, most programs do not definitively state that the fee paid by the lender will be added into costs associated with the foreclosure. The language generally reads that said sums "may be" associated as a cost.

3) Mandated Mediation

For the most part, most of the programs are mandatory so long as the borrower qualifies. Qualifying may simply be that the borrower is an owner occupant of a residential one family unit. Or it may also include that

the borrower has affirmatively asked for mediation. The majority of programs out there are either automatic or require an affirmative step to be taken by the borrower. The blazingly obvious difference to this is Wisconsin. Unless both the borrower and lender agree to mediation it does not take place—even if one party is agreeable to same.

H. Problems Observed

1) Lack of Uniformity

The more mediation programs established means more mediation programs for the lenders and servicers in the mortgage industry to monitor and comply with. Obviously, they will be relying on their local counsel. However, some programs do require action to be taken by the lender directly. As such, it is important for the lender and/or servicer to be familiar with the various programs and their requirements. With so many programs out there, it is challenging for the lenders and servicers to stay on top of them. Tack on the lack of uniform programs in a particular State. A prime example of this is Florida. While most of the programs in this State are very similar, they are still separate programs.

Moreover, even if a State has a statewide program that does not necessarily mean that it is applied the same way. A clear example of this is the state of Ohio. Ohio has a "model" that has been created but it is not mandatory for the 88 counties to follow it precisely. As such, each county can create its own nuances and requirements.

2) Preparedness

As noted above, several of the mediation programs require the borrower to submit financial information prior to the conference. This is a key element to the conference being productive. In jurisdictions where information and documentation are not provided beforehand, delays are seen. Without financial information the lender is unable to determine what, if any, foreclosure alternative may be offered to the particular borrower. This usually leads to adjournments of the conference in order for the information and documentation to be provided.

Additionally, having the information provided prior to the conference—rather than at the conference—puts the lender in a much better position to be able to discuss options at the conference. The information can be reviewed thoroughly beforehand, and real options can be discussed at the conference.

3) Safe Harbor?

On May 20, 2009, President Obama signed into law the Helping Families Save Their Homes Act of 2009. Within the Act is a section deemed the "Safe Harbor". Pursuant to the statute, if a servicer enters into a "loss mitigation plan" as to a residential mortgage (including those held in a securitization) originated prior to the Act's enactment the servicer is deemed to have satisfied it's duty owed to investor's and/or other parties if: default on the mortgage is imminent or has occurred; the mortgagor occupies the mortgaged premises as his/her primary residence;

and the servicer reasonably determined that entering into the loss mitigation workout plan would recover more money than completing the foreclosure. If these qualifications are met, then, under the statute, the servicer would have no liability.

As many will recall, in 2008 Countrywide entered into an agreement with the Attorney Generals of 11 States to, in part, modify thousands of loans. In *Greenwich Financial Services Distressed Mortgage Fund 3, LLC, et als. vs. Countrywide Financial Corporation, et al.* in the United States District Court, Southern District of New York, 08 Civ. 11343, investors on those loans not owned by Countrywide brought suit (via a class action). They alleged that Countrywide had not complied with the terms of the pooling-and-servicing agreements and, per said agreements, Countrywide was therefore required to buy back the loans it modified.

Countrywide attempted to have the case heard in Federal Court. Countrywide argued that the Safe Harbor provision protected it. As such, it was not liable to the investors and was not, therefore, required to buy back the loans that were modified. The argument, as per the Court, was that federal law was a necessary element to the plaintiff's claim, and therefore, required a federal forum. The Court disagreed. Per the Court, it was actually Countrywide raising a federal defense and that is not a sufficient for finding a federal question. As the Federal Court found that it did not have jurisdiction over the case, it remanded the action to State Court. At this juncture, the case is back in State Court (New York County, Index No. 650474/08).

It is clear that an outcome not in Countrywide's favor may open the floodgates to similar litigation and could affect many servicers who have modified loans in attempts to help keep homeowners in their homes.

I. Federal Default: Safe Act-A New World Starting August 1, 2009

The implosion of the subprime mortgage market brought with it a number of very simple questions: Who, What and Why? A plethora of answers were provided—along with a plethora of finger pointing. Many blamed those who originated the mortgages…the mortgage brokers and loan originators. Whether true or not or as widespread as alleged—there was a large consensus that this group of individuals took advantage of unsophisticated borrowers. So, while a large focus of legislative and judicial acts has been to assist in stemming the tide of foreclosures, there was another focus—how to prevent this from happening again…how to protect borrowers in the future?

With that in mind, the federal S.A.F.E. Mortgage Licensing Act of 2008 was enacted (Secure and Fair Enforcement for Mortgage Licensing Act of 2008). While the Act establishes a number of requirements, one of the very basic principles is that, as of August 1, 2009, any person who, for compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of such an application must be licensed or registered as a mortgage loan originator.

What is the impact on mediation? Under the provisions of the Act one could contend that those individuals in the lender or servicer's office that are negotiating the loan modifications would be required to be licensed. While these individuals are not "originating" loans as one would typically use the term, the argument can be made that they are negotiating terms of an application for a loan. There is an argument to be made that the Act does not apply in such situations. The mortgage is already in existence. As such, merely renegotiating the terms of the current loan would not fall under this statute. Additionally, many question whether an individual in the loss mitigation department of a lender is actually being compensated as was meant by the statute.

J. Court Monitor Programs: Example: Ca AB 1588

From the description of the mediation programs above, one can see that most are monitored—and generally monitored by the courts. But, particularly in non-judicial jurisdictions such as California, there is no such oversight/involvement. In response to this, there is proposed legislation in California calling for the creation of a "Monitored Mortgage Workout Program". The proponents of this program are calling for state appointed monitors to help ensure that homeowners have an opportunity to work out their default with their lender so as to keep homeowners in their homes and make the Home Affordable Modification Program a success.

Under the proposal, any borrower who received a notice of default is eligible to participate. The borrower must opt into the program. A Monitor would then be appointed to work with the parties to determine the possibility of a loan modification. If the parties cannot reach a modification together, the Monitor will prepare a modification proposal that abides by the guidelines of HAMP, if a proposal is feasible. If the lender refuses the proposal or acts in bad faith the borrower can bring a court action to enforce the Monitor's proposal. The foreclosure process is stayed until the program is completed.

A major concern with the proposed legislation (from the lender/servicer position) is that the proposed legislation is forcing lenders to accept modifications they have deemed not in their or their investors' best interests or pursuant to set guidelines.

K. Bridging the GAP Among Courts, Servicers & Borrowers – Solutions

In theory, mediation is that bridge between the courts, servicers and borrowers. However, the implementation of the theory is still, in many ways, lacking. As noted previously, not every State/not every jurisdiction has a mediation program in place. In those areas the disconnect between the courts, servicers and borrowers remains the same. We all hear the gripes on each side—the servicers claim they try to make contact and the borrowers don't respond or, if they do respond, fail to provide information the lender needs to determine if there is a workable foreclosure

alternative. On the flip side, the borrowers complain that they try constantly to get a hold of a representative of their lender with no success, or, if they do get someone on the phone, there is never any follow up. In judicial jurisdictions—the courts are caught in the middle when the case comes before them.

Yet, even jurisdictions with mediation programs are not without a disconnect. Programs that don't require documentation and financial information prior to the hearing date are creating an unnecessary delay. If the lender/servicer is expected to attend the hearing and be able to settle the matter, it should have all necessary information to review prior to that hearing. Being able to thoroughly review the information and available alternatives would, in essence, provide for a more efficient mediation conference. It would also reduce the time to conclude mediation as there would be no need (or less of a need) for mediation conferences to be adjourned for the borrower to compile the necessary information. A uniform approach to the provision of information would increase the effectiveness of mediation programs.

L. Borrower Representatives Equalize the Bargaining Positions

Many borrowers in default are unaware of their options and/or are unwilling to speak to their lenders (some are embarrassed, some don't realize that their maybe a way to work out the situation with the lender). Whether it is an attorney or a housing counselor, pairing a borrower in default with one (or both) assists the borrower and the process. Not only is the attorney and/or housing counselor now acting as the voice of the borrower (in many instances) but he/she is, most times, very familiar with the intricacies involved in loan workouts. They know what documentation and/or financial information the lender is going to need and they are familiar with the various foreclosure alternatives available.

M. Do We Need Foreclosure Attorneys for Foreclosures and Workout Attorneys for Workouts?

Maybe. Maybe not. This answer is not meant to be facetious but realistic. Many, but not all, foreclosure attorneys also handle other matters related to defaulted mortgages (ie: bankruptcy matters). For those who handle more than one type of matter, most have established separate departments/staff for each. Yet the law firm itself handles both types of proceedings.

In those instances where the law firm is handling both a foreclosure and bankruptcy matter for a particular borrower—the information and background of the file is with that one firm. The borrower is already familiar with the firm. This makes it easier to discuss matters with the borrower and process the file correctly. Based on this rationale, there is no reason why a law firm could not create a separate department for loan workouts. In fact, in today's world, many law firms have done just that. While one department of the firm is handling the foreclosure another group

is handling the loan workout. A major benefit of this scenario (ideally) is that both departments are in tune with what is happening on this one file—the foreclosure department is aware of the loan workout discussions taking place and the loan workout department is aware of the status of the foreclosure action. With the above being said, if a law firm is unable to handle loan workout matters (or any type of matter really) then such cases should be referred to another attorney that is capable.

New Category of Workout Attorney:

On the other hand, it can be argued that the same firm is burdened with conflicts and vulnerable to legal attacks especially from the borrower. At this stressful time, Borrowers are generally without attorney representation according to many articles (See Documents Article Time Where Are All The Foreclosure Lawyers?, by Tim Padgett / Miami Sat., 10/24/09 __D17), and reports from pro bono or legal-aid groups, and HUD Counselors. Foreclosure/workout attorneys working for the Servicer, but in contact with the borrower who is attempting to secure a workout solution is problematic. The borrower may have rights against same for any (mis)representations, etc. Conflicts of interests, potential violations of FTC, FDCPA (confusion, overshadowing, etc.) and other laws should be avoiding for the benefit of all parties to the workout process. The servicer and the borrower should have their own workout attorney representing its respective interests. Maybe the time has come to acknowledge that the borrower is entitled to his/her attorney of choice, and that the servicer should use a workout attorney for negotiating workouts, other than its foreclosure attorney, especially if in direct contact with the borrower.

Summary – Court Mediation and Monitor Programs

New Court Mediation or Monitor Programs:

New court mediation or monitor programs can play a crucial role in reaching alternatives to foreclosure. The programs must be standardized in order to reach uniformity of results. Additionally, the programs must present an equally fair framework in which all interested parties to the mortgage workout can be represented. The standards set by the programs must be objectively obtainable to avoid unfairness, and unnecessary confusion and disagreements. Intelligent information and document processing as well as loss mitigation decisioning, must be done prior to costly court hearings. This will empower the parties to quickly resolve the vast majority of the cases without expensive and time consuming court intervention. However, the court must supply the fast track forum for matters that fail to resolve itself. Funding for court processing must be supplied by state and federal incentive programs, and by the parties to the mortgage, mediation, or litigation.

Section IV - Ethics, Jail & Challenges Facing the "Business of Mortgage Modifications"

Overview of the Ethics of the Business of Mortgage Modifications

This year we have also seen abuse of borrowers by unlicensed persons, 'foreclosure rescue scammers', "mod companies', and licensed brokers and attorneys acting on behalf of borrowers. We have also seen a strong, aggressive, and very successful response by the state licensing authorities, including State Bars, State Attorneys General, District Attorneys, and the FTC. We have seen attorneys disbarred, and persons sent to jail.

After the mortgage meltdown, throughout the country, non-lawyers have engaged in a business model of referring clients to lawyers for a fee or a share in the profits. This was and is unethical but many lawyers still got caught-up in variations of such an arrangement, and by doing so, either directly or indirectly, engaged in numerous ethical and local law violations.

There is a national trend underway to prohibit persons, brokers as well as attorneys from charging up-front fees to assist or negotiate mortgage modifications for borrowers. The need to combat unscrupulous persons, including brokers and attorneys from taking advantage of borrowers in high volume boiler room type businesses, has tipped the scales in favor of placing legal restrictions on attorneys in how and when they can charge a borrower when representing him/her in a mortgage modification.

Leading the charge, California enacted SB 94 as an emergency measure to protect the public from attorneys, brokers and all others who would seek to charge a borrower an upfront fee.

New California Law:

SB 94 (Calderon) On October 11, 2009, California has aggressively moved to stave off attorney abuse of troubled borrowers by the passage of Senate Bill No. 94, known as the prohibition on advance fees. The State Bar of California issued its interpretation of SB 94 in part as follows:

Prohibition against Collection of Advance Fees The legislation prohibits the collection of advance fees for loan modifications, as specified. Among other provisions, new Civil Code Section 2944.7(a)(1) provides as follows:

> "Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand,

> charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

Civil Code Section 2944.7(d) provides that Section 2944.7 applies only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units. Under new Business and Professions Code Section 6106.3(a), it constitutes cause for the imposition of discipline of an attorney for an attorney to engage in any conduct in violation of Civil Code Section 2944.7. The State Bar's interpretation of the new statutory language, in response to the three most common questions it has received, is set forth below.

Common Questions & Answers:

The State Bar's Office of the Chief Trial Counsel will enforce the statutory language consistent with this interpretation. *1. Is Civil Code Section 2944.7(a)(1) retroactive?* Agreements entered into and advance fees collected prior to October 11, 2009 are not affected. Advance fees based on agreements entered into prior to October 11, 2009, but collected after October 11, 2009, must be fully refunded.

2. Is it a violation of Civil Code Section 2944.7(a)(1) to collect an advance fee, place that fee into a client trust account, and not draw against that fee until the services have been fully performed? Yes. The statutory language of the prohibition uses the word "receive" and the plain meaning of that term is broad enough to encompass a lawyer's receipt of advance fees into a trust account. Civil Code Section 2944.7(a)(1) makes it unlawful to "collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform," whether the compensation is placed into the lawyer's client trust account, general account or any other type of account.

3. Is it a violation of Civil Code Section 2944.7(a)(1) to ask for or collect a "retainer"? Civil Code Section 2944.7(a)(1) makes it unlawful to "[c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform," even if that compensation is called a "retainer."

Required Notice to Borrower - The legislation also requires that specified notice be provided to the borrower, as a separate statement, prior to entering into any fee agreement with the borrower. Among other provisions, new Civil Code Section 2944.6(a) provides as follows:

> "Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to

perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov."

Civil Code Section 2944.6(b) provides that if loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Civil Code Section 1632, a translated copy of the required statement must be provided to the borrower in that foreign language.

Civil Code Section 2944.6(e) provides that Section 2944.6 applies only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Under new Business and Professions Code Section 6106.3(a), it constitutes cause for the imposition of discipline of an attorney for an attorney to engage in any conduct in violation of Civil Code Section 2944.6.

(See Program Documents: Ethics CA SB 94 State Bar)

WARNING: A violation of the law can result in fines and up to one year in jail.

Local Jurisdictions Take Action:

Even local jurisdictions have taken action. For example, the Los Angeles City Attorney's Office signed Ordinance No. 180675 on 4/28/09, known as the Mortgage Modification Consultant Regulations. It added Article 7.2 to Chapter IV of the LA Municipal Code. At the time, the ordinance did not include attorneys exempted under the definition of "Foreclosure Consultant" by Subsection (b) of Section 2945.1 of the California Civil Code. However, with the passage of SB 94, attorneys are no longer exempted. The ordinance enacted a right of cancellation with contract notice provisions in 14 point boldface type. It also established a right to sue for any violation of the ordinance.

Enforcement Actions:

Mod Firms Bombarded With Lawsuits

FTC, several states sue modification firms over big up-front fees and false promises

August 12, 2009, By SAM GARCIA

Government lawyers in several states have been busy filing nearly 200 lawsuits and other actions against loan modification companies. At issue in several cases reviewed by MortgageDaily.com are huge up-front fees, false promises of high success rates and money-back guarantees that are not honored.

In Florida, Attorney General Bill McCollum filed a lawsuit in the Fifteenth Judicial Circuit against FHA All Day.Com, its owner Jason Vitulano and three affiliated companies that allegedly charge up-front fees of as much as $5,000 for loan modification services, according to a copy of the complaint. The defendants earn around $1 million monthly from up-front modification fees through automated marketing phone calls that illegally used President Barack Obama's voice.

Claims that the company has a staff of attorneys were disputed by McCollum, who noted that Vitulano and company didn't perform promised services. More than 300 complaints were received about the company, and the attorney general hopes to collect civil penalties of $15,000 for each violation of the Foreclosure Fraud Prevention Act and obtain a permanent injunction barring up-front fees.

In the other Sunshine State, Arizona, Attorney General Terry Goddard recently touted several actions taken against modification firms. Among those actions was a lawsuit filed against Hope for Homeowners Now LLC, which allegedly solicited up-front fees of $3,195. Another complaint filed against Loan Modification of America LLC accused that firm of falsely claiming a 90 percent success rate and a 100 percent money-back guarantee.

Loan Modification Professional Services is accused by Arizona of collecting between $1,500 and $3,500 from eight customers who claim they never received the services they were promised. That lawsuit was filed in Maricopa County Superior Court.

Santoya Financial Company LLC is accused in a lawsuit by Goddard of falsely advertising that its services were endorsed by the U.S. Department of Housing and Urban Development. Santoya allegedly suggested fees were refundable if the modification was unsuccessful because of the endorsement.

Goddard was making the announcements in conjunction with Operation Loan Lies -- an initiative undertaken by the Federal Trade Commission and several states that targeted 200 loan modifications firms. When the initiative was announced on July 15, the FTC indicated federal and state agencies took 189 actions.

Over in New Jersey, Stephen Pasch, attorney Ejike N. Uzor, New Day Financial Solutions and several related companies were sued in New Jersey Superior Court in Essex County by Attorney General Anne Milgram, who claims the defendants offered worthless guarantees, wrongly advised customers to stop making payments and collected up-front fees of as much as $4,200 while not helping delinquent borrowers.

A second lawsuit filed in Superior Court in Mercer County by Milgram accuses Best Interest Rate Mortgage Co. of violating the Consumer Fraud Act and the New Jersey Debt Adjustment and Credit Counseling Act. Best offered modification services without a state license to conduct debt adjustment activity, while misleading solicitations appear to have been from a government agency. Borrowers were charged "several thousand dollars" up front, though they were promised it would be returned if the modification didn't go through, and were told to stop making payments.

"The defendants also are charged with misleading consumers through false advertising and deceptive solicitations, and engaging in debt adjustment activity without a license," the New Jersey news release said of defendants in both cases. "As with the New Day complaint, the state's lawsuit against Best Interest Rate Mortgage Co. asks the court to order a halt to the defendants' unlawful business practices, seeks restitution for consumers and the imposition of maximum civil penalties."

California-based U.S. Homeowners Assistance was sued in the Hamilton County Court of Common Pleas by Ohio Attorney General Richard Cordray over allegations it misled borrowers and failed to deliver on promises. It is charged with violations of the Ohio Consumer Sales Practices Act, Telephone Solicitation Sales Act, Debt Adjusters Act and the Telephone Consumer Protection Act.

Customers responding to automated phone calls were charged $1,800, though U.S. Homeowners "fails to deliver and fails to refund consumers' money," according to Ohio. The lawsuit followed a cease-and-desist order issued in May. The judge in the case has reportedly granted a temporary restraining order to prevent the company from continuing its actions while the case is being decided.

California's Attorney General Edmund G. Brown Jr. announced five lawsuits filed against 21 individuals and 14 companies. Brown, who seeks full restitution from the defendants, claims the firms violated a range of California codes including the Business and Professions Code sections 2945.3, 17500 and 17200, Civil Code sections 2945 et seq., 2945.4 and 2945.45, and Penal Code section 487. Other codes allegedly violated included

One of the California lawsuits was against U.S. Homeowners Assistance and company executives Hakimullah "Sean" Sarpas and Zulmai Nazarzai for falsely claiming a 98 percent success rate and implying it was a government agency. None of its customers received loan modifications even though they paid up-front fees of as much as $3,500. The state seeks $7.5 million in civil penalties.

RMR Group Loss Mitigation Group and executives Michael Scott Armendariz , Ruben Curiel and Ricardo Haag are also accused of falsely claiming a 98 percent success rate and money-back guarantee -- taking in fees of $1 million from 500 borrowers. Also named as defendants in the lawsuit -- which seeks $7.5 million in civil penalties -- are Living Water Lending Inc., attorney Arthur Steven Aldridge, the law firm of Shippey & Associates and its principal attorney Karla C. Shippey.

A lawsuit filed against US Foreclosure Relief Corp., executives George Escalante and Cesar Lopez, and legal affiliate Adrian Pomery claims the defendants charged up to $2,800 up front -- earning $4.4 million in one nine-month period, California's statement said.

Another action against Home Relief Services LLC, executives Terence Green Sr. and Stefano Marrero, and attorney Christopher L. Diener his firm the Diener Law Firm alleged the defendants charged up to $4,000 in up-front fees. The firm allegedly promised modifications with 4 percent interest rates and 50 percent principal reductions -- though none of its customers actually received such modifications. California seeks $10 million in civil penalties.

Up the Pacific Coast in Seattle, Washington Attorney General Rob McKenna announced four lawsuits, including one filed against California-based Mason Capital Group over alleged violations of Washington's Consumer Protection Act, Mortgage Broker Practices Act, Distressed Property Conveyance Act and Credit Services Organization Act. The company wasn't authorized to do business in the state, collected up to $3,000 in up-front fees and didn't do anything for its customers.

G Services Group, which does business as Guardian Services, faced similar allegations in a lawsuit filed by McKenna. The firm allegedly charged $1,500 in up-front fees.

Four Illinois lawsuits filed in Cook County Circuit Court by Attorney General Lisa Madigan alleged the defendants charged up-front modification fees but failed to perform any actual services. Violations of Illinois' Mortgage Rescue Fraud Act are alleged. In addition to a permanent injunction barring the defendants from mortgage rescues, Madigan is asking for each defendant to pay a civil penalty of $50,000 and for additional penalties where the intent to defraud borrowers of impacted senior citizens.

The Illinois lawsuits were filed against:

- Capital Foreclosure Solutions and its president, Katen (Keith) Pabley, SGM Mortgage Inc. and its President Scott Kotalik, United Home Solutions Inc. and The Mack Financial Group Inc.;

- Midwest Foreclosure Solutions and its President Judel James Robert and Maria C. Scardicchio;

- People's First Financial; and

- Loan Modification Inc. and owner Edward J. Galowitch.

In Kansas, Attorney General Steve Six reported that he filed three lawsuits alleging that Kirkland Young LLC in Florida, ABS Saveco in Georgia and Helping Hands Support Services in California collected from $499 to thousands of dollars for doing nothing.

United Law Group claimed in a July 30 press release that it negotiated a Home Affordable Modification on a $700,000 that brought the monthly payment down to $2,570 from $4,112. The process with servicer Saxon Mortgage Services took nine months.

State of Florida, Office of the Attorney General, Department of Legal Affairs, Plaintiff, vs. FHA AllDay.com Inc., a Florida corporation; Safety Financial Services Inc., a Florida Corporation, Housing Assistance Law Center, PA, a dissolved Florida Corporation; Housing Assistance Now Inc., a dissolved Florida Corporation; Jason Vitulano, individually and as owner, officer and/or director of FHA AllDay.com Inc. and as owner, officer and/or director of Safety Financial Services Inc., Defendants.

Case No. 2009CA024341, July 20, 2009 (Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County).

ANE MILGRAM, Attorney General of the State of New Jersey, DAVID M. SZUCHMAN, Director of the New Jersey Division of Consumer Affairs, and STEVEN M. GOLDMAN, Commissioner of the New Jersey Department of Banking and Insurance, Plaintiffs, v. BEST INTEREST RATE COMPANY, L.L.C., Defendant.

July 10, 2009 (New Jersey Superior Court in Essex County),

ANNE MILGRAM, Attorney General of the State of New Jersey, DAVID M. SZUCHMAN, Director of the New Jersey Division of Consumer Affairs, and STEVEN M. GOLDMAN, Commissioner of the New Jersey Department of Banking and Insurance,, Plaintiffs, v. NEW DAY FINANCIAL SOLUTIONS, SA, NDROA, INC., AMERICAN CREDIT REPAIR AND DEBT SETTLEMENT, L.L.C.,PARAMOUNT DEBT SETTLEMENT USA, L.L.C., UZOR FINANCIAL SOLUTIONS, L.L.C., UZOR AND ASSOCIATES, P.C., AMERICAN FINANCIAL ADVOCACY COUNCIL, STEPHEN PASCH, EJIK N. UZOR, JANE and JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of NEW DAY FINANCIAL SOLUTIONS, SA, AMERICAN CREDIT REPAIR AND DEBT SETTLEMENT, L.L.C., PARMOUNT DEBT SETTLEMENT USA, L.L.C., UZOR AND ASSOCIATES, P.C., and XYZ CORPORATIONS 1-10, Defendants.

Docket No. ESX-C-190-09, July 10, 2009 (Superior Court of New Jersey Chancery Division-Essex County).

The People of the State of California, Plaintiff, v. STATEWIDE FINANCIAL GROUP, INC., a California corporation doing business as US HOMEOWNERS ASSISTANCE; US HOMEOWNERS PRESERVATION CENTER, INC., a California corporation; HAKIMULLAH SARPAS, an individual; ZULMAI NAZARZAI, an individual; SHARON FASELA, an individual; RASHA YEHIA MELEK, an individual; and DOES 1 through 100, inclusive, Defendants.

(Superior Court of the State of California County of Orange).

The People of the State of California, Plaintiff, v. RMR GROUP LOSS MITIGATION, LLC, a California limited liability company; LIVING WATER LENDING, INC., a California corporation; SHIPPEY & ASSOCIATES, P.C., a California professional corporation; MICHAEL SCOTT ARMENDARIZ, an individual; RUBEN CURIEL, an individual; RICARDO HAAG, an individual; KARLA C. SHIPPEY, an individual; ARTHUR S. ALDRIDGE, an individual; and DOES 1 through 100, inclusive, Defendants.

(Superior Court of the State of California County of Orange).

Federal Trade Commission, The People of the State of California, and the State of Missouri, Plaintiffs, v. U.S. Foreclosure Relief Corp.

Case No. SACV09-768 JVS(MLGX), July 7, 2009 (U.S. District Court for the Central District of California).

The People of the State of California, Plaintiff, v. HOME RELIEF SERVICES, LLC, a California limited liability company; THE DIENER LAW FIRM, a California professional corporation; GOLDEN STATE FUNDING, INC., a Nevada corporation;PAYMENT RELIEF SERVICES, INC., a California corporation, CHRISTOPHER L. DIENER, an individual; KATHLEEN MARRERO-DAVIS, an individual; TERENCE GREEN SR., an individual; STEFANO MARRERO, an individual; MAYA BURRELL MARRERO, an individual; RONALD C. SPECTER, an individual; KENNETH BUHLER, an individual; and DOES 1 through 100, inclusive, Defendants.

(Superior Court of the State of California County of Orange).

State of Washington, Plaintiff, v. Mason Capital Group LLC, a New Mexico foreign limited liability company, not authorized to transact business in Washington, Defendant.

July 15, 2009 (State of Washington Snohomish County Superior Court).

State of Washington, Plaintiff, v. G Services Group LLC, a California Limited Liability Company, not authorized to transact business in Washington, d/b/a Guardian Services Group, Defendant.

July 15, 2009 (State of Washington King County Superior Court).

Mod Firms Targeted in 'Operation Loan Lies' -

FTC, 23 states take 189 actions against loan modification firms

July 15, 2009 By MortgageDaily.com staff

State and federal officials have launched '"Operation Loan Lies" -- an effort targeting nearly 200 loan modifications firms for a number of alleged illegal practices including promising services they can't deliver, charging more than $5,000 in advance fees and misrepresenting their affiliations with mortgage servicers.

Federal and state agencies took 189 actions today against modification and foreclosure-rescue firms, the Federal Trade Commission announced. The coordinated actions were part of a national law-enforcement effort by 2 federal and 23 state agencies to crack down on loan modification scams.

Dubbed "Operation Loan Lies," the actions targeted firms that allegedly promised to obtain modifications or stop foreclosures -- though they did nothing. Advance fees charged by the firms were equal to one or more mortgage payments.

The defendants are also accused of failing to provide promised refunds.

Among the actions were four lawsuits file by the FTC, which is asking the court for consumer redress and a permanent ban on the deceptive practices.

The lawsuits were filed against Lucas Law Center, which charged advance fees up to $3,995 and told borrowers to stop making their payments; Apply2Save, where modifications were promised in 30 to 90 days for advance fees up to $995; US Foreclosure Relief, which falsely claimed years of experience; and Loss Mitigation Services, which charged up to $5,500 in advance, misrepresented its relationship with servicers and falsely promised to obtain a modification -- according to the FTC.

In all, the consumer protection agency said it has filed 14 lawsuits mortgage tied to foreclosure rescue and loan modification scams.

The FTC also reported a July 9 Stipulated Final Judgment against Foreclosure Solutions LLC and owner Timothy A Buckley. The company is accused of falsely claiming years of experience, falsely touting high success rates and violating the FTC's Do Not Call Rule by calling borrowers on the National Do Not Call Registry.

Federal Trade Commission, The People of the State of California, and the State of Missouri v. US Foreclosure Relief Corp., a corporation, also, d/b/a U.S. Foreclosure Relief, Inc., Lighthouse Services, and California Foreclosure Specialists, George Escalante, individually and as an officer of US Foreclosure Relief Corp., Cesar Lopez, individually and doing business as H.E. Service

Company, and Adrian Pomery, Esq., individually and also trading and doing business as Pomery & Associates.

Civil Action No. 09-CV-768, FTC File No. 092 3120, July 7, 2009 (United States District Court Central District of California)

Federal Trade Commission v. LucasLawCenter “Incorporated”, a corporation, also d/b/a Lucas Law Center, Future Financial Services, LLC, a limited Liability company, also d/b/a Lucas Law Center, Paul Jeffrey Lucas, an individual, Christopher Francis Betts, an individual, and Frank Sullivan, an individual.

Civil Action No. 09-CV-770, FTC File No. 092 3127, July 7, 2009 (United States District Court Central District of California Southern Division)

Federal Trade Commission v. Apply2Save, Inc. a corporation, Sleeping Giant Media Works, Inc, a corporation, and Derek R. Oberholtzer, individually and as an officer of Apply2Save, Inc., and Sleeping Giant Media Works, Inc.

FTC File No. 092 3117, July 14, 2009 (United States District Court for the District of Idaho)

Federal Trade Commission v. Loss Mitigation Services, Inc., Synergy Financial Management Corporation, also d/b/a Direct Lender and DirectLender.com, Dean Shafer, Bernadette Carr-Perry, and Marion Anthony (a.k.a. "Tony") Perry.

Civil Action No. 09-CV-800, FTC File No. 092 3073, July 13, 2009 (United States District Court Central District of California)

Federal Trade Commission, Plaintiff, v. Foreclosure Solutions, LLC, and Timothy A. Buckley, Defendants.

Case 1:08-cv-01075, FTC File No. 072 3131, FTC File No. 092 3120, April 28, 2008 (United States District Court for the Northern District of Ohio, Eastern Division)

Credit Repair Firms Targeted by Regulators: FCC, states go after credit repair firms: Oct. 28, 2009 By SAM GARCIA -

Federal and state regulators have been on a recent rampage filing lawsuits and taking actions against credit repair firms. The companies -- many located in Florida -- are accused of collecting huge up-front fees and promising services that are not delivered. Meanwhile, the implementation of a new rule will require disclosures about free credit reports.

Earlier this month, the Federal Trade Commission said it is seeking public comment about its proposal to amend the Free Annual File Disclosures Rule, which is also known as the "Free Credit Report Rule." The proposed amendments would implement a new law designed to prevent consumer

confusion in free credit report advertisements and would address practices that could hamper a consumer's ability to obtain a free credit report from credit reporting agencies that are already required to provide such under federal law

The FTC is required to issue a rule by Feb. 22, 2010, under the Credit CARD Act of 2009. Offers for free credit reports would need to prominently disclose that the offers are unrelated to federally mandated free credit reports.

On Friday, the FTC announced Operation Clean Sweep, a joint effort with 24 state agencies to crack down on 33 operations that deceptively claim they can remove negative credit information -- even when the negative items are accurately reported. The actions were taken as a result of thousands of complaints from consumers.

"Companies that promise they are able to scrub your credit reports of accurate, negative information for a fee are lying -- plain and simple," Lydia Parnes, director of the FTC's Bureau of Consumer Protection, said in the statement. "Under federal law, accurate, negative information can be reported for up to seven years, and some bankruptcies can be reported for up to 10 years."

The seven firms were accused of violating the FTC Act, the Credit Repair Organizations Act and state laws by making false and misleading claims and by charging advance fees for credit repair services.

Among the companies charged were Florida-based Nationwide Credit Services Inc., which allegedly charged advance fees of between $75 and $150 and total fees of between $300 and $1,000 that were debited monthly from bank accounts. Nationwide allegedly did no work for the customers and denied refund requests. Another Florida firm, Clean Credit Report Services Inc., faced similar accusations but collected $400 in advance fees.

RCA Credit Services LLC, also based in Florida, allegedly promised to raise credit scores above 700 in as little as 30 days and remove all negative credit for a cost of between $500 and $3,000 with a portion paid in advance. But RCA often did nothing. It also violated the CROA by failing to provide a written statement of Consumer Credit File Rights Under State and Federal Law before contracts were signed, by not conspicuously noting in their contracts that consumers have a three-day right of rescission and for failing to provide a written notice-of-cancellation form.

Latrese & Kevin Enterprises Inc., which also operates as Hargrave & Associates Financial Solutions, charged around $250 per person to erase bad credit. The Florida firm is also charged with violating the FTC Act by falsely claiming consumers will receive a credit card with a credit line as high as $10,000 after paying an advance fee of as much as $300.

The Florida firms of ACE Group Inc. -- which also does business as American Credit Experts Inc., The Ace Group Inc., The Ace Group and ACE -- and Legal Credit Repair Center Inc., also known as LCRC, promised 60-day results for advance fees of around $50 plus $59.95 a month. But their method was to

repeatedly send dispute requests even after the bureaus have verified that the entries were accurate.

California-based Successful Credit Service Corp., which also does business as Success Credit Services, claimed it had special relationships with creditors, collection companies, credit bureaus and public record providers, according to the agency. Customers were charged advanced fees of between $3,000 and $4,000. Successful agreed to an $8.3 million settlement with the FTC a few weeks ago.

Over in Illinois, Advantage Credit Repair LLC advertised that it didn't charge large up-front fees, though it did require as much as $269 in advance, and promised a refund after 60 days if there were no results, though it rarely gave refunds.

Earlier in the month, Texas-based Lee Harrison Credit Restoration, which also operated as Credit Restoration and Lee Harrison Associates Credit Restoration, agreed to a $2.5 million FTC settlement.

New Jersey's Office of the Attorney General and its Division of Consumer Affairs obtained a final consent judgment against United Credit Adjusters, Bankruptcy Masters Corp., United Counseling Association, Inc., and Credit Bureau Controls Corp. The defendants were ordered to pay $500,000 in civil penalties and $86,918 in reimbursement to the state. In addition, two officers of the companies were ordered to pay $15,022 in restitution to 17 consumers.

All of the defendants were banned from credit-related businesses. The state claims that the defendants charged up-front fees but failed to deliver the promised services, including raising credit scores and removing negative entries.

Federal Trade Commission v. Nationwide Credit Services, Inc., a Florida corporation and James R. Dooley, individually and as president of Nationwide Credit Services, Inc.

Civil Action No. 3:08-CV-1000-J-25TEM, FTC File No. 082 3219 (U.S. District Court Middle District of Florida).

Federal Trade Commission v. Clean Credit Report Services, Inc., Ricardo A Miranda, Daniel R. Miranda, and Ruthy Villabona.

Civil Action No. 1:08-cv-22922-AJ, FTC File No. 082 3220 (US. District Court for the Southern District of Florida Miami Division).

Federal Trade Commission v. Successful Credit Service Corporation, a California corporation also dba Success Credit Services and Tracy Ballard aka Tracy Ballard-Straughn, individually and as an officer and/or director of Successful Credit Service.

Civil Action No. 2:08-cv-06829-ODW-SH, FTC File No. 082 3223 (U.S. District Court for the Central District of California Western Division).

Federal Trade Commission v. Advantage Credit Repair LLC and Mark D. Solomon.

Civil Action No. 1:08-CV-05994, FTC File No. 082 3223 (U.S. District Court for the Northern District of Illinois Eastern Division).

Federal Trade Commission v. RCA Credit Services, LLC, a Florida corporation, Rick Lee Crosby, Jr., individually, and as an officer or manager of Defendant, and Brady Wellington, individually, and as an officer or manager of Defendant.

Civil Action No. 8:08-CV-2062-T-27MAP, FTC File No. 082 3148 (U.S. District Court Middle District of Florida).

Federal Trade Commission v. Latrese & Kevin Enterprises Inc., a Florida Corporation, also doing business as Hargrave & Associates Financial Solutions, Latrese Hargrave, also known as Latrese V. Williams, individually and as an officer of Latrese & Kevin Enterprises, and Kevin Hargrave, Sr., individually and as an officer of Latrese & Kevin Enterprises Inc.

Civil Action No. 3:08-CV-1001-J-34JRK, FTC File No. 082 3007 (U.S. District Court Middle District of Florida Jacksonville Division)

Federal Trade Commission v. Ace Group, Inc. a Delaware corporation, also d/b/a American Credit Experts, Inc., The Ace Group, Inc., The Ace Group, and Ace, Legal Credit Repair Center, Inc., a Florida Corporation, also d/b/a LCRC, Michael Singer, Melvin Kessler, and Gerald Roth.

Civil Action No. 0:08-CV-61686-PAS, FTC File No. 082 3172 (U.S. District Court Southern District of Florida)

Federal Trade Commission v. Successful Credit Service Corporation, a California corporation also dba Success Credit Services and Tracy Ballard aka Tracy Ballard-Straughn, individually and as an officer and/or director of Successful Credit Service.

Civil Action No. 2:08-cv-06829-ODW-SH, FTC File No. 082 3233 (U.S. District Court for the Central District of California Western Division)

FTC. v. Rudolph Joseph Strobel a/k/a Lee Harrison, individually and doing business as Lee Harrison Credit Restoration, Credit Restoration, and Lee Harrison Associates Credit Restoration, and Leanna Ruth Harrison, individually and doing business as Lee Harrison Credit Restoration, Credit Restoration, and Lee Harrison Associates Credit Restoration.

FTC File No. 082 3141 (U.S. District Court for the Eastern District of Texas)

Anne Milgram, Attorney General of the State of New Jersey, and David M. Szuchman, Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. United Credit Adjusters Inc., Bankruptcy Masters Corp., United Counseling

> Association Inc., Credit Bureau Controls Corp., Ahron E. Henoch, individually, and Ezra Rishty, individually, and Jane and John Does 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of United Credit Adjusters Inc., Bankruptcy Masters Corp., United Counseling Association Inc., Credit Bureau Controls Corp. and XYZ Corporations 1-10, Defendants.
>
> Docket No. Mon-C-158-08 (Superior Court of New Jersey, Chancery Division, Monmouth County)

Conflicts of Interest

Foreclosure Attorneys

Some Servicers are requiring that the borrower contact the foreclosure attorney directly, and the foreclosure attorney, sale-trustee or 3rd party service are requiring borrower to fill out its forms and submit confidential financial information to it at the same time as the servicer is requiring the borrower to fill out its different forms and submit same to the servicer overburdening the borrower with multiple sets of different financial forms with varying imposed short trigger deadlines; both acting as debt collectors coached as 'partners' in seeking a loss mitigation/modification solution for the borrower; conflicts, confusion, overshadowing and FDCPA/FTC issues abound; fundamental fairness has been lost.

New Category of Attorney Representative for Workouts?

Maybe the time has come to acknowledge that the borrower is entitled to his/her attorney of choice, and that the servicer should use a *workout attorney* for negotiating workouts, other than its foreclosure attorney performing the foreclosure, especially if attorney is in direct contact with the borrower (as a debt collector under FDCPA/FTC rules). Conflicts of interests, potential violations of FTC, FDCPA (confusion, overshadowing, etc.) and other laws should be avoiding for the benefit of all parties to the workout process. The plaintiffs bar may see great opportunity to take action against those playing on both sides of the court. The servicer and the borrower should have their own workout attorney representing its respective interests.

There is a need for Senior Level Authority - Dedicated Professional-to-Professional Approval Contacts, for example:

> Dedicated Professional to Professional Approval Contacts - HAMP Servicers will identify a senior level point of contact to communicate by phone, fax, and e-mail and who is authorized to grant approval of loss mitigation/modification proposals submitted under HAMP by any of (i) a HUD-certified housing counseling representative, (ii) the borrower's licensed attorney or (iii) the borrower's registered real estate broker (each, a "Borrower Third Party Professional Representative"). Servicer will supply "Borrower Third Party Professional

> Representative" a denial with explanation, approval, or request for more specifically identified information or documents, within 30 days from completed and submitted loss mitigation/modification proposal.

Has Protection of Borrowers Gone Too Far or Not Far Enough?

This year we have also seen abuse of borrowers by unlicensed persons, 'foreclosure rescue scammers', "mod companies', and licensed brokers and attorneys acting on behalf of borrowers. We have also seen a strong, aggressive, and very successful response by the state licensing authorities, including State Bars, State Attorneys General, District Attorneys, and the FTC. We have seen attorneys disbarred, and persons sent to jail. We must now decide if we have gone far enough or have we gone too far? Are we impeding upon the very basic right of borrowers to hire and pay an attorney of his/her choice? Have we already thrown the baby out with the bath water? Borrowers are presently without sufficient attorney representation according to many articles (See Documents Article Time Where Are All The Foreclosure Lawyers?, by Tim Padgett /10/24/09 __D17), pro bono or legal-aid groups, and HUD Counselors. Mortgage and foreclosure workouts are a complex area of the law. Volunteers, law students, and new attorneys may simply not have the knowledge, experience, or tools to effectively represent borrowers at this critical time.

Do We Need More Borrower Attorneys in the Mix?

The following is a quote from the article entitled Time Where Are All The Foreclosure Lawyers? by Tim Padgett (Miami Sat., 10/24/09):

> Carolina Lombardi, a senior attorney at Legal Services of Greater Miami Inc., which is mentoring some of the UM fellows, says foreclosure defendants also need attorneys to help them fend off all-too-frequent lender practices like exorbitant escrow claims. "Homeowners who have lawyers are usually prevailing in those cases," says Lombardi. But she notes that unless homeowners fall below the federal poverty line ($22,000 for a family of four), they can't qualify for the free legal aid that agencies like hers provide. That creates an obstacle for most foreclosure defendants, who aren't impoverished but because of job loss and other circumstances that brought them to the brink of losing their home, often can't afford a lawyer.
>
> …Melanca Clark, counsel at the Brennan Center and co-author of this month's study, urges Congress and state legislatures to create incentives, like more funding for foreclosure legal representation, that "level the playing field" against lenders and their comparatively well-paid lawyers. Restrictions on government funding for legal services should be relaxed, she says, especially rules that don't let victorious foreclosure defendants collect attorney fees, as prevailing parties in most other kinds of civil litigation do. **"We need structural reforms as badly as we need more [foreclosure defense] lawyers,"** says Clark.

One Example Why Borrowers Must Have Effective Representation or His/Her Own Attorney

Would Servicers Wrongfully Deny Initial HAMP Eligibility?

Servicers would argue they don't wrongfully deny initial HAMP eligibility and they wouldn't because its goal is to afford itself and its investors the government program HAMP incentives. However, some Servicers are denying borrowers HAMP initial eligibility (See Program Documents: Rydstrom Article: OCTOBER 8, 2009: A BUSY HAMP DAY IN D.C. New HAMP Supplemental Directive 09-07, The HAMP 500,000 Modification Milestone Announcement, New Servicer Performance Report, COB 9-30-09 Making Home Affordable Remaining Problems & Solutions: __D18).

But why would a Servicer do that? Here are some possible motivating factors:

1. Excessive Back End Debt (DTI) is probable to cause re-default (and that creates greater losses to investors)

    a. Back End DTI is not an initial eligibility factor. Only excessive Front End DTI (>31%) is a DTI factor of HAMP eligibility.

2. To Start or Continue the Foreclosure Process (to avoid prolonging the time line to recover the asset in foreclosure)

Making Home Affordable website represents to the borrower:

> "MANY LENDERS HAVE MADE A COMMITTMENT TO DELAY FORECLOSURE ON ALL LOANS THAT MEET THE MINIMUM ELIGIBILITY CRITERIA FOR A HOME AFFORDABLE MODIFICATION." (November 9, 2009)

This is reason enough to enhance the safeguards for the borrower. One way to do that is to relax prohibitions on attorneys seeking to represent borrowers. California for example prohibits a borrower's attorney from charging upfront legal fees for workout services. Although this is a well intended prohibition, which has and will reduce events of borrower abuse, it has the unintended result of stripping the borrower from effective counsel – leaving the (HAMP) system to perpetuate misuse of government programs (HAMP) intended to benefit the borrower by offering 'alternatives to foreclosure.' Maybe it's time to safeguard the borrower and the servicer with its own attorney representative for workouts. If appears that alternative means of supplying attorneys to borrowers will be required, or borrowers will continue to suffer from lack of effective representation.

UPDATE: California has enacted the nation's first "Civil Gideon" statute (pilot project, AB590 by Assemblyman Mike Feuer, D-Los Angeles expands Gideon v. Wainwright),to provide a lawyer to people who cannot afford one in civil cases related to critical basic human needs. Unfortunately this law is not likely to help

the unrepresented people in need in California, as it goes into effect July 2011 It's named the Sargent Shriver Civil Counsel Act, after Schwarzenegger's father-in-law. Cases intended to be covered include housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships, elder abuse and actions by a parent to obtain sole legal or physical custody of a child. With some 6-13 million foreclosures projected over the next 5 years or more, and with more than 4.3 million Californians now believed to be unrepresented in court proceedings, the question remains whether prohibiting ethical attorneys from normal advance fee retainer work in the foreclosure and loss mitigation/modification fields, will solve the unrepresented problem in California.

Reginald Warren, Sr. v Countrywide Home Loans, Inc. (USCA 11th Cir.) No. 08-16171

The case of Reginald Warren, Sr. v Countrywide is cited by the foreclosure bar as assurance that the conduct of the foreclosure attorney is not subject to liability under FDCPA – when foreclosing on a home. Since, most court agree that the conduct of foreclosing on a home is not debt collection for purposes of section 1692g, (not 1692f(6) and 1692i(a)) a claim for violation of the FDCPA limited to that conduct would not lie. However, it is important to point out that if a foreclosure attorney acts as a debt collector – in the capacity other than foreclosing on the home, or in direct contact with the borrower with efforts to obtain a workout solution, the foreclosure attorney is probably exposed to liability for his/her conduct as a debt collector, and for any (mis)representations, overshadowing, confusion, etc. caused by his conduct. See Program Documents _D19

Karen L. Jerman v Carlisle, McNellie, etc.

In Jerman v Carlisle, the court upheld the FDCPA defense of mistake of law. However, it is important to note that defendants were found to have violated the FDCPA by instructing Jerman that she must dispute the debt in writing, however, the defendants qualified for the FDCPA bona fide error defense (15 U.S.C. Section 1692k(c)) because they had taken reasonable precautions or steps to maintain proper business and educational procedures intended to avoid such legal errors. An unintentional violation with an intentional communication may be covered by the bona fide defense. See Program Documents _D20

FTC Actions:

FTC, California Attorney General Brown, Missouri Attorney General v. US FORECLOSURE RELIEF CORP., (7/7/09)

Pursuant to the Preliminary Report of Temporary Receiver, US Foreclosure claimed to be ***an attorney based firm***. The complaint alleged that although attorneys performing legal services in the course of representing clients may charge clients up-front retainer fees, ***the attorney exemption did not apply in***

this case – if an attorney is not in fact rendering legal services but is merely acting as a font for non-attorney foreclosure consultants in an attempt to avoid compliance with Civil Code Section 2945.4. The case also alleges violations of B&P Code 17500 for untrue and misleading statements, 17200 for unfair competition and violation so f Missouri law regarding advance fees (Sections 407.935 to 407.943). See Program Documents _D21

The People of the State of California v RMR Group, etc. (July 2009)

Defendant RMR Group is not a law corporation or licensed as a real estate broker or an entity authorized to make loans or extensions of credit.

> This case was filed by California Attorney General Brown against Defendants for unlawfully charging customers up front fees (ranging in the thousands of dollars) while falsely promising to help them negotiate better mortgage terms from their lenders and to rescue them from foreclosure. Despite taking these exorbitant advance fees, Defendants provide little or no assistance to their customers. As many other foreclosure rescue companies have done, in an attempt to avoid statutory prohibitions on collecting fees before any services have been rendered, Defendants have included one or more attorneys in their scheme. Noting the alarming trend in the number of complaints issued against attorneys involved with foreclosure rescue companies, the State Bar has issued an Ethics Alert cautioning attorneys from lending their names to loan modification companies when non-lawyers purportedly negotiate with the lenders on the customers' behalf but actually provide little to no services; meanwhile, the non-lawyers also collect fees from the consumers and provide distressed homeowners with reckless and harmful advice on how to deal with their lenders. Since at least Spring 2008, Defendants have advertised, marketed, offered for sale, and sold purported mortgage loan modification and foreclosure rescue services. As more particularly alleged below, Defendants engaged in a scheme to swindle distressed homeowners by enticing them to engage the Defendants to negotiate loan modifications with their respective lenders. Defendants falsely represented both their success rate in negotiating loan modifications for customers and the type of loan modification they could secure for homeowners, including lower, fixed interest rates, principal reductions, lower monthly payments, and forgiveness of arrears. Defendants market their services to homeowners who are in financial distress and in danger of losing their homes to foreclosure. Defendants also solicited consumers through in-home solicitations. When consumers speak to Defendants over the telephone or in person, they are told that Defendants have significant negotiating experience and success in negotiating with their particular lenders. Defendants also tell consumers that their success rate in modifying loans is 90%, 99%, or 100%. Defendants' representatives would tell potential customers that they did not personally know any customers who were not able to obtain loan modifications through Defendants. In fact, Defendants are unable to obtain loan modifications for most of their customers. Defendants make the following false statements to the consumer after obtaining information about the prospective customer's mortgage: (a) Defendants guarantee a loan modification for their customers; etc.

At Paragraph 37 it alleges that:. While California's law defining and regulating foreclosure consultants under the Mortgage Foreclosure Consultant Act (the Act), as codified in Civil Code section 2945 *et seq*., includes exceptions for attorneys licensed to practice law in California when "render[ing] [foreclosure consultant] service in the course of his or her practice as an attorney at law" (Civil Code, § 2945.1(b)(1)), and while Defendants Aldridge and Shippey are attorneys licensed to practice law in California, the exemption does not apply here, nor do any of the exceptions set forth in the Act. Defendants Aldridge and Shippey do not perform (or claim to perform) foreclosure consultant services for consumers while also providing them with legal services. The complaint also alleges:

(f) Violating Penal Code section 487, by taking money of a value exceeding $400 from consumers by theft, as described in Paragraphs 41, 50, and 51 above;

(g) Violating Penal Code section 532, by knowingly and designedly obtaining consumers' money by false pretenses, as described in Paragraphs 32 and 41 above;

(h) Violating Civil Code section 1632 by negotiating foreclosure consultant contracts primarily in Spanish to Spanish-speaking consumers, but not providing a translation of the contract in that language before requiring the consumer to sign a contract printed in English, as described in Paragraph 44 above;

(i) Violating Business and Professions Code sections 6151 and 6152, by engaging in "running and capping," the practice of non-attorneys obtaining business for an attorney, as described in Paragraph 36 above;

(j) Violating Business and Professions Code section 6155, by Defendants RMR Group, Living Water Lending, Armendariz, Curiel, Haag, and Does 1-100 in directly or indirectly referring potential clients to Defendants Shippey, Aldridge, and Shippey Law Firm without seeking registration as a lawyer referral service by the State Bar, and by Defendants Shippey, Aldridge, and Shippey Law Firm in accepting referrals of such potential clients, as described in Paragraph 36 above;
(k) Violating 18 United States Code section 1014 and California Penal Code section 532a by knowingly submitting false statements regarding their customers' income and expenses in attempt to induce federally insured lenders to agree to modifications of the customers' mortgage loans, as described in Paragraph 43 above; and

(l) Violating Business and Professions Code section 17500, as more particularly alleged in Paragraphs 52 through 54 above. See Program Documents _D22

THE PEOPLE OF THE STATE OF CALIFORNIA, v. HOME RELIEF SERVICES, LLC, et al

The complaint alleges that the attorney exemption does not apply in this case. The defendants are non attorneys and attorneys. The complaint alleges:

> 25. Since at least Spring 2008 until approximately June 2008, Defendants operated
> primarily under the names Home Relief Services, LLC and Payment Relief Services, Inc. From June 2008 to approximately February 2009, Defendants operated primarily under the name Home Relief Services, LLC. In February 2009, DRE ordered Defendant HRS, Defendant Marrero, Defendant Green, and other persons to desist and refrain from continued unlicensed activities related to marketing and soliciting consumers for loan modification services. On February 9, 2009, Defendant Specter, acting as counsel for Defendant HRS, Defendant Marrero, and Defendant Green, informed DRE that Defendant HRS would cease operation on February 27, 2009, and the remainder of Defendant HRS' client files would be forwarded to Defendant Diener Law Firm. Thereafter, Defendants have operated under the names US Loan Mod Processing and Diener Law Firm.
>
> 26. Since at least Spring 2008, Defendants have advertised, marketed, offered for sale, and sold purported mortgage loan modification and foreclosure rescue services. As more particularly alleged below, Defendants engaged in a scheme to swindle distressed homeowners by enticing them to engage Defendants to negotiate loan modifications from their respective lenders. Defendants falsely represented both their success rate in negotiating loan modifications for customers and the type of loan modification they could secure for homeowners, including lower, fixed interest rates, principal reductions, lower monthly payments, and forgiveness of arrears. Defendants market their services to homeowners who are in financial distress and in danger of losing their homes to foreclosure.
>
> 34. Defendants also solicit consumers through telemarketing and in-home solicitations, and through the use of referrals from brokers and other third parties.
>
> 35. Defendants are not currently registered as telephonic sellers in the State of California.
>
> Defendants also tell consumers that their success rate in modifying loans is 90% or 95%. In fact, Defendants are unable to obtain loan modifications for most of their customers.
>
> 41. Defendants also falsely tell consumers that attorneys affiliated with Defendants review customers' financial paperwork and also negotiate with the lenders on their behalf. Indeed, as a result of Defendants' solicitation, some of Defendants' customers are pressed by Defendants' representatives to sign or otherwise unwittingly sign contracts with Defendants Diener and Diener Law Firm, believe the contracts are with Defendant HRS or another entity. These contracts obligate consumers to pay Defendants Diener and Diener Law Firm a fee and authorize Defendants Diener and Diener Law Firm to hire the other Defendants, even though the consumer has never spoken with nor ever heard of Defendants Diener and Diener Law Firm. Customers are not given any opportunity to speak with or have any contact with any attorneys affiliated with

Defendants about their loans, and neither Defendants Diener and Diener Law Firm nor any other attorneys affiliated with Defendants review customers' financial documents or negotiate with lenders on their behalf. Moreover, Defendants' customers are informed by their lenders that the lenders have not been contacted by Defendants Diener and Diener Law Firm, or any of their lawyers, on the customers' behalf.

42. While California's law defining and regulating foreclosure consultants under the Mortgage Foreclosure Consultant Act ("the Act"), as codified in Civil Code section 2945 *et seq*., includes exceptions for attorneys licensed to practice law in California when "render[ing] [foreclosure consultant] service in the course of his or her practice as an attorney at law" (Civil Code, § 2945.1(b)(1)), and while Defendant Diener is an attorney licensed to practice law in California, the exemption does not apply here, nor do any of the exceptions set forth in the Act. Defendant Diener does not perform (or claim to perform) foreclosure consultant services for consumers while also providing them with legal services.

43. Defendants improperly collect fees before completing all services they agree to provide to consumers.

58. Consumers retain Defendants to be their negotiator and advisor during the loan modification process. Defendants then use information provided by their customers to market their real estate services to lenders. Defendants advertised *to their own customers' lenders* that, on average, it would take eight months before lenders could sell their clients' homes. This pitch is not meant to advantage the customer; rather, Defendants mean to highlight their "retail auction" services to lenders, whereby Defendants act as the lenders' agent in a short sale of their customers' homes. Defendants assure the lenders that Defendants could short sell their customers' homes in 45 days or less. By exploiting their trusted position with their customers and their inside information about their customers' financial circumstances, Defendants attempt to use this information for the benefit of themselves and the lenders, and to the extreme detriment of their customers.

59. Defendants acted as mortgage loan brokers in connection with negotiating home loans for customers, performing services for customers in connection with home loans, and/or engaging in any other conduct requiring real estate licensure and, therefore, owed a fiduciary duty to each customer. That fiduciary duty imposed an obligation (1) to make a full and accurate disclosure of the status of the customer's loan modification application and the material terms of any proposed modification agreement that might affect a borrower's decision to accept the modification; (2) to act always in the utmost good faith toward the customer; (3) to act in accordance with principles of complete loyalty to the customer's best interests and to the exclusion of all others' interests; (4) to avoid taking any positions or making any statements that are in conflict with the customer's best interests; and (5) not to obtain any advantage over the customer. By offering to be the lenders' agent to short sale their customers' homes while purporting to act as their customers' agent in loan modification, Defendants violated their fiduciary duties to their customers.

65. From a date specific unknown to Plaintiff and continuing to the present, Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:
(a) Failing to perform on their promises, made in exchange for upfront fees from their customers, that Defendants would negotiate modifications of their mortgage loans and secure lower and/or fixed interest rates, principal reductions, and, in some cases, elimination of second mortgages. Defendants did little or nothing to help customers modify their mortgage loans. Instead, consumers, having already paid large sums of money to Defendants, lost their homes or were forced to attempt a loan modification on their own, as described in Paragraph 57 above;

(b) Luring customers into paying upfront fees with promises to refund all, or most, of the upfront fees if they do not get a loan modification. When customers learned that
their lenders were unwilling to modify their loans, or that Defendants had done little or nothing to assist in a modification, they demanded the promised refund. Despite Defendants' promises, Defendants regularly denied customers' refund requests, as described in Paragraphs 40 and 56 above;

(c) Deceiving customers into believing that failing to contact their lenders, or evading their lenders' communications, would increase the odds that their modification applications would be successful. Customers relied on Defendants' advice because Defendants assured them that Defendants would remain in contact with lenders. In fact, Defendants were not in contact with lenders and lenders assumed that consumers were not willing to work with the lender to save their homes. Heeding Defendants' advice placed customers in even greater jeopardy of losing their homes, as described in Paragraph 45 above; and

(d) Deceiving customers into believing that suspending mortgage payments, and diverting those funds to pay Defendants' upfront fees instead, would increase the odds that their modification application would be successful. Defendants also promised their customers that the missed mortgage payments would not endanger or adversely impact lenders' decisions on their modification applications or otherwise accelerate the foreclosure process. Defendants' advice placed consumers in even greater jeopardy of losing their homes, as described in Paragraphs 46 and 47 above;

(e) Negotiating with consumers in a language other than English, but requiring consumers to sign contracts printed in English, as described in Paragraph 49 above;

(f) Violating Penal Code section 487, by taking money of a value exceeding $400 from consumers by theft, as described in Paragraphs 46, 57, and 60 above;

(g) Violating Penal Code section 532, by knowingly and designedly obtaining consumers' money by false pretenses, as described in Paragraphs 37 and 46 above;

(h) Violating section 17511.3 of the Business and Professions Code by failing to register as a telephonic seller prior to utilizing the telephone to conduct sales of its loan modification services, as described in Paragraphs 34 and 35 above;

(i) Violating Business and Professions Code section 17533.6, by employing the use of logos and seals on their documents, which appear to resemble the governmental seal of the United States Department of Housing and Urban Development, as described in Paragraph 33 above;

(j) Violating Business and Professions Code sections 6151 and 6152, by engaging in "running and capping," the practice of non-attorneys obtaining business for an attorney, as described in Paragraph 41 above;

(k) Violating Business and Professions Code section 6155, by Defendants HRS, Golden State Funding, PRS, Marrero-Davis, Green, Marrero, Burrell Marrero, Specter, Buhler, and Does 1-100 in directly or indirectly referring potential clients to Defendants Diener and Diener Law Firm without seeking registration as a lawyer referral service by the State Bar, and by Defendants Diener and Diener Law Firm in accepting referrals of such potential clients, as described in Paragraph 41 above;

(l) Violating 18 United States Code section 1014 and California Penal Code section 532a by knowingly submitting false statements regarding their customers' income and expenses in attempt to induce federally insured lenders to agree to modifications of the customers' mortgage loans, as described in Paragraph 48 above;

(m) Violating Civil Code section 1632 by negotiating foreclosure consultant contracts primarily in Spanish to Spanish-speaking consumers, but not providing a translation of the contract in that language before requiring the consumer to sign a contract printed in English, as described in Paragraph 49 above;

(n) Violating their fiduciary duty to their customers by offering to be the lenders' agent to short sale the consumers' homes while acting as the customers' agent in loan modification negotiations, as described in Paragraphs 58 and 59 above;

See Program Documents _D23

THE PEOPLE OF THE STATE OF CALIFORNI v. STATEWIDE FINANCIAL GROUP, INC., et al

The complaint alleges:

19. Since at least June 2007 to present, Defendants operated primarily under the name US Homeowners Assistance and USHA. 20. Since at least June 2007, Defendants have advertised, marketed, offered for sale, and sold purported mortgage loan modification and foreclosure rescue services. As more particularly alleged below, Defendants engaged in a scheme to swindle distressed homeowners by enticing them to engage the Defendants to negotiate loan modifications from the homeowners' respective lenders. Defendants falsely represented both their success rate in negotiating loan modifications

for customers and the type of loan modification they could secure for homeowners, including lower, fixed interest rates, principal reductions, lower monthly payments, and forgiveness of arrears. Defendants market their services to homeowners who are in financial distress and in danger of losing their homes to foreclosure.

21. Defendant Statewide Financial and Defendant US Homeowners Preservation are not licensed by DRE. None of the Defendants have submitted advance fee agreement applications and none of the Defendants have received the required response from DRE — known as “no objection” — allowing them to charge advance fees to consumers.

22. Defendants market and sell their loan modification services to consumers who are particularly vulnerable to fraud, including the disabled and/or those 65 years of age or older.

23. Before engaging Defendants’ services, many of Defendants’ customers had already defaulted on their mortgages by falling behind on their mortgage payments.

24. Defendants market and sell their loan modification services to consumers even when they are aware that a lender has recorded a notice of default on the consumer’s home.

25. Defendants market and sell their loan modification services to consumers even when they are aware that a lender may have posted a notice of trustee sale on the consumer’s property, which typically occurs three months after a notice of default has been recorded and notifies the homeowner that a sale will take place within 20 days.

26. Defendants solicit consumers for loan modification services in a number of ways, including advertising on radio and direct mailings. Through these advertisements, consumers are told that no matter how dire their housing situation, Defendants can offer a solution to allow them to keep their homes. The advertisements list a toll-free number for them to call for more information.

27. Defendants also post press releases on the Internet. In one such press release, Defendants claimed that USHA was a governmental agency “on the front end of the war against foreclosures” that was “currently seeking alliance with other government agencies to help homeowners save or modify their current bad loan.” In another press release, Defendants claimed that USHA was a non-profit agency “in the business of helping the borrowers as well as the banks.” USHA is neither a governmental agency nor a non-profit organization.

28. At times, Defendants told consumers that USHA was approved by the government to provide loan modification services and that USHA was working with the Obama administration to help consumers save their homes. The United States Department of Housing and Urban Development (HUD) has not certified USHA has an approved housing counselor.

29. Defendants also solicited consumers through telemarketing. 30. Defendants are not currently registered as telephonic sellers in the State of

California. 31. When consumers speak to Defendants over the telephone or in person, they are told that Defendants have significant negotiating experience and success in negotiating with their particular lenders. Defendants also represented to consumers that

their success rate in modifying loans was 90%, 95%, or even 98%. In fact, Defendants are unable to obtain loan modifications for most of their customers.

32. Despite the fact that they are unable to negotiate loan modifications for most of their customers, Defendants make the following false statements to the consumer after obtaininformation about the prospective customer's mortgage:
(a) Defendants guarantee a loan modification for their customers; etc.

36. Defendants also falsely state to consumers that attorneys affiliated with Defendants review customers' financial paperwork and also negotiate with the lenders on their behalf. In reality, however, customers are not given any opportunity to speak with or have any contact with any attorneys affiliated with Defendants about their loans, and no attorneys affiliated with Defendants review customers' financial documents or negotiate with lenders on their behalf. Moreover, Defendants' customers are told by their lenders that the lenders have not been contacted by Defendants or any of Defendants' representatives on the customers' behalf.
40. Defendants also prepare false financial statements that do not reflect their customers' actual income and expenses and submit the fraudulently modified information to lenders. Defendants counsel their customers that Defendants will determine how much the customers can afford and draft the financial worksheets to submit to the lenders. In doing so, Defendants invariably inflate income amounts or create additional income streams, while also reducing expenses and debts — in some cases flagrantly inventing income and debt streams and amounts — such that the financial worksheet ultimately submitted to the lender reflects the debtor's inability to pay the current loan amount. In some instances, Defendants knowingly submitted false information related to consumers' income and expenses to federally insured lenders without consumers' knowledge and/or permission.

41. Defendants improperly collect fees before completing all services they agree to provide to consumers.

42. Defendants' contracts with consumer are deficient in multiple ways, including but not necessarily limited to the following:

(a) Defendants do not include a notice, printed in at least 14-point boldface type, advising consumers that Defendants cannot take money until they have completely finished doing everything they say they would do, and that Defendants cannot make consumers sign any lien, deed of trust, or deed;

(b) Defendants fail to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants;

(c) Defendants do not always providing consumers with a notice of cancellation form prescribed by law, etc.

Additional the complaint alleges crimes:

(f) Violating Penal Code section 487, by taking money of a value exceeding $400 from consumers by theft, as described in Paragraphs 38, 48, and 49 above;

(g) Violating Penal Code section 532, by knowingly and designedly obtaining consumers' money by false pretenses, as described in Paragraphs 32 and 38 above;

(h) Violating 18 United States Code section 1014 and California Penal Code section 532a by knowingly submitting false statements regarding their customers' income and expenses to induce federally insured lenders to agree to modify the customers' mortgage loans, as described in Paragraph 40 above.

See Program Documents _D24

FTC LETTER RULING

With respect to a foreclosure attorney acting as a debt collector seeking to discuss settlement workout options with the debtor (borrower), in an FTC advisory opinion, the FTC found that there was no per se violation of Section 809 in the debt collector's initial or subsequent communications with the consumer. However, the FTC also found that this did not prevent a *fact-based finding* that a specific communication violates the FDCPA if it overshadows or inconsistent with the disclosures of the consumer's right to dispute the debt within 30 days.

With respect to a whether it would violate the prohibitions on false, deceptive, or misleading representations made in collection of a debt, the FTC that is was not a *per se* violation but that the FTC would conduct a *fact-based inquiry* to determine whether a specific communication is false or misleading based on all the facts and circumstances concerning the communication.

> FTC ADVISORY OPINIONS: The Commission, where appropriate, responds to requests for formal advisory opinions regarding the application or interpretation of the FDCPA. In May 2008, the FTC issued an advisory opinion regarding whether debt collectors in the foreclosure context would violate the Act if they communicate with consumers about possible settlement options that may assist consumers to avoid foreclosure. The FTC's advisory opinion concluded that debt collectors do not commit a *per se* violation of the FDCPA when they provide such information to consumers, provided that the information is truthful and non-misleading. 46

See Program Documents FTC Advisory Opinion Dated May 19, 2008 _D25

Section V. Ethics in Today's Mortgage Crisis

It is unethical and unlawful to engage in an “Attorney Backed Loan Mod Company” in part because it creates an unlawful practice of law. It is aiding and abetting the unauthorized practice of law. In People v. Sipper (1943) 61 Cal. App. 2d Supp. 844. Lawyers cannot be partners with non-lawyers. Lawyers cannot split legal fees with non-lawyers. Non-lawyers or brokers cannot perform legal tasks, or give legal advice including advising a client as to what documents or agreements are needed in a certain loss mitigation or mortgage workout situation, negotiate with the lender/bank/servicer (without other authority), or give advice regarding the meaning of the legal documents or arrangement.

The Ohio Supreme Court suspended an attorney for providing token legal services to customers of a high-volume mortgage foreclosure counseling firm that was engaged in the unauthorized practice of law (Cincinnati Bar Ass'n v. Mullaney, Ohio, No. 2008-0412). The court also enjoined another attorney as pro hac vice, and reprimanded another.

Unlawful Practice of Law:

In California, Business and Professions Code §6125, and §6126 make it a crime for anyone to practice law without an active license.

> 6125**.** No person shall practice law in California unless the person is an active member of the State Bar.
>
> 6126. (a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

In California, licensed broker who complies with Business and Professions Code §10240 and §10241 may negotiate a loan for a client.

In-house counsel cannot represent the customers/clients of the company in which the attorney is serving. The attorney owes a duty of loyalty to its client and can not misrepresent or mislead the public. The company cannot sell the lawyer’s modification services and charge the client for referring them to the lawyer. Generally, a company must be licensed as a state legal referral service, to refer attorneys to clients.

Capping and running

An attorney cannot pay for leads, pay for clients, or pay referral fees, directly or indirectly. Such is capping and running and remains unethical.

The Wrongful Conduct Reminder List:

Attorney Backed Loan Mod Company
Attorney Affiliated Loan Mod Company
Attorney Based Loan Mod Company
Accepting Referral or Marketing Fees
Fee-Splitting
Unauthorized Practice of Law
Foreclosure Delay Lawsuits or Motions
Broker's referring clients to lawyers for fees, profit, or gain
Lawyers as partners with non-lawyers
Capping and Running
Misleading Advertising
Contacting a troubled homeowner in person or by telephone referred by a foreclosure consultant or someone else unless the lawyer has a family or prior professional relationship with the homeowner
Failing to perform competently

Signs of Borrower Scams:

Demands to Transfer Title
Demands for Upfront Fees
Lease Back Scams
Foreclosure Defense delay tactics, including filing bankruptcy, wrongful motions, etc.
No Face to Face Meetings
Signing in Blank
Unlicensed Persons or Companies

In response to the foreclosure rescue scams the California State Bar issued an ethics alert in February 2, 2009 reminding attorneys of the rules of professional conduct, including in part the following:

> A California lawyer may not pay a referral or marketing fee to a foreclosure consultant or other person for referring distressed homeowners to the lawyer.
>
> A California lawyer may not directly or indirectly split any attorney's fees that the lawyer earns from a distressed homeowner client with the foreclosure consultant or any other non-lawyer.

A California lawyer may not aid a foreclosure consultant or anyone else in the unauthorized practice of law. A lawyer may not form a partnership or joint venture with a foreclosure consultant or other non-lawyer if any of the activities of the business would involve providing legal services. A lawyer may not, under the guise of serving as in-house counsel for a foreclosure consultancy business, perform legal services for a distressed homeowner.

A California lawyer may not contact in person or by telephone a distressed homeowner referred to the lawyer by a foreclosure consultant or someone else unless the lawyer has a family or prior professional relationship with the homeowner. Nor may a lawyer direct another to do so on the lawyer's behalf. A lawyer, however, may write to a distressed homeowner who is a prospective client.

A California lawyer may not without good cause file a lawsuit or motions in a lawsuit that are simply intended to delay or impede a foreclosure sale.

A lawyer may not intentionally or recklessly fail to perform legal services with competence.

A lawyer should be wary of accepting fees for little or no work.

California Illustrative Professional Rules of Conduct:

Rule 1-300 Unauthorized Practice of Law
(A) A member shall not aid any person or entity in the unauthorized practice of law. (B) A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

ABA Model Rules of Professional Conduct

Law Firms And Associations
Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Rule 1-310 Forming a Partnership With a Non-Lawyer
A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

Discussion: Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 1-320 Financial Arrangements With Non-Lawyers
(A) Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer, except that:

(1) An agreement between a member and a law firm, partner, or associate may provide for the payment of money after the member's death to the member's estate or to one or more specified persons over a reasonable period of time; or (2) A member or law firm

undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member; or

(3) A member or law firm may include nonmember employees in a compensation, profitsharing, or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, if such plan does not circumvent these rules or Business and Professions Code section 6000 et seq.; or

(4) A member may pay a prescribed registration, referral, or participation fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California.

(B) A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
(C) A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule. ***Discussion:***
Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment. (Amended by order of Supreme Court, operative September 14, 1992.)

ABA Model Rules of Professional Conduct

Law Firms And Associations
Rule 5.4 Professional Independence Of A Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Rule 1-600 Legal Service Programs

(A) A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules. (B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.

Discussion: The participation of a member in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of these rules. Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services. Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public. For purposes of paragraph (A), "a nongovernmental program, activity, or organization" includes, but is not limited to group, prepaid, and voluntary legal service programs, activities, or organizations.

Rule 3-100 Confidential Information of a Client

(A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.
(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual. (C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances:
(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and (2) inform the client, at an appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).
(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.
(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule. ***Discussion:***
[1] *Duty of confidentiality.* Paragraph (A) relates to a member's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a member: —To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client. A member's duty to preserve the confidentiality of client information involves public policies of paramount importance. (*In Re Jordan* (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].) Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct.
(Additional Discussion Items Omitted)

ABA Model Rules of Professional Conduct

Client-Lawyer Relationship
Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

Rule 3-110 Failing to Act Competently

(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.
(C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

Discussion: The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and nonattorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances. (Amended by order of Supreme Court, operative September 14, 1992.)

ABA Model Rules of Professional Conduct

Client-Lawyer Relationship
Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 3-200 Prohibited Objectives of Employment

A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is: (A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
(B) To present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law.

Rule 4-200 Fees for Legal Services

(A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee. (B) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:
(1) The amount of the fee in proportion to the value of the services performed. (2) The relative sophistication of the member and the client. (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly. (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.
(5) The amount involved and the results obtained. (6) The time limitations imposed by the client or by the circumstances. (7) The nature and length of the professional relationship with the client. (8) The experience, reputation, and ability of the member or members performing the services. (9) Whether the fee is fixed or contingent. (10) The time and labor required.
(11) The informed consent of the client to the fee.
(Amended by order of Supreme Court, operative September 14, 1992.)

ABA Model Rules of Professional Conduct

Client-Lawyer Relationship
Rule 1.5 Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Prohibition of Solicitation:

Solicitation is unlawful. In California Section 6152 of the Business and Professions Code states:

6152. (a) It is unlawful for:
(1) Any person, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any attorneys or to solicit any business for any attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.
(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).
(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety **Code**, as a result of the injury alleged to have given rise to the claim and primarily for treatment of the injury, is presumed fraudulent if the release is executed within 15 days after the commencement of confinement or prior to release from confinement, whichever occurs first.
(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.
(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether those persons are in custody or otherwise.

Ca Rules of Professional Conduct, Rule 1-400 Advertising and Solicitation illustrates the principle (http://calbar.org/pub250/9/s0009-a.htm):

Rule 1-400. Advertising and Solicitation

(A) For purposes of this rule, "communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited to the following:

(1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or

(2) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such member, law firm, or lawyers; or

(3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or

(4) Any unsolicited correspondence from a member or law firm directed to any person or entity.

(B) For purposes of this rule, a "solicitation" means any communication:

(1) Concerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain; and

(2) Which is;

(a) delivered in person or by telephone, or

(b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.

(C) A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited.

(D) A communication or a solicitation (as defined herein) shall not:

(1) Contain any untrue statement; or

(2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or

(3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public; or

(4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or

(5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

(6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.

(E) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule 1-400. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

(F) A member shall retain for two years a true and correct copy or recording of any communication made by written or electronic media. Upon written request, the member shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar evidence to support any factual or objective claim contained in the communication.

(Former rule 1-400 (D)(6) repealed by order of the Supreme Court effective November 30, 1992. New rule 1-400 (D)(6) added by order of the Supreme Court effective June 1, 1997.)

Standards:

Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989, unless noted otherwise, as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400:

(1) A "communication" which contains guarantees, warranties, or predictions regarding the result of the representation.

(2) A "communication" which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."

(3) A "communication" which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel.

(4) A "communication" which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.

(5) A "communication," except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word "Advertisement," "Newsletter" or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word "Advertisement," "Newsletter" or words of similar import on the outside thereof.

(6) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.

(7) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.

(8) A "communication" which states or implies that a member or law firm is "of counsel" to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.

(9) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.

(10) A "communication" which implies that the member or law firm is participating in a lawyer referral service which has been certified by the State Bar of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case.

(11) A "communication" which states or implies that a member is a "certified specialist" unless such communication also states the complete name of the entity which granted the certification as a specialist. (Repealed by order of the Supreme Court, effective June 1, 1997. See rule 1-400(D)(6).)

(12) A "communication," except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the

communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.

(13) A "communication" which contains a dramatization unless such communication contains a disclaimer which states "this is a dramatization" or words of similar import.

(14) A "communication" which states or implies "no fee without recovery" unless such communication also expressly discloses whether or not the client will be liable for costs.

(15) A "communication" which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.

(16) An unsolicited "communication" transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or "yellow pages" section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee.

(Amended by order of Supreme Court, operative September 14, 1992. Standard (5) amended by the Board of Governors, effective May 11, 1994. Standards (12) - (16) added by the Board of Governors, effective May 11, 1994.)

ABA Model Rules of Professional Conduct

Information About Legal Services
Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Section VI. Brief Litigation Update / Technology, Security, and Protecting the Privacy of Confidential Information

Foreclosure Attorney's New Burden?

With all the foreclosure litigation and challenges to standing on the servicer's attorney, and the new requirements with HAMP rules, court mediation and court monitor proposals and document requirements, we pose the question of just how prepared must the foreclosure attorney be if litigation continues to be hotly contested. The following case quote is food for thought:

"This Court further holds that the lender who has brought this proceeding to foreclose the mortgage must demonstrate by a fair preponderance of the evidence that the mortgage was not the product of unlawful discrimination. [Since it is the lender-plaintiff who seeks equitable relief from this Court, the onus is upon the lender to satisfy the requisites of equity and come to this Court with "clean hands." Junkersfeld v. Bank of Manhattan Co., 250 A.D.646 (1st Dept. 1937). This is a threshold action is of no moment."

Red Flags Rule Delayed
FTC delays enforcement until June 2010

Nov. 2, 2009
By *MortgageDaily.com* staff

Implementation of the *Red Flags Rule* has been delayed again.

The Federal Trade Commission announced Friday that enforcement of the rule has been delayed until **June 1, 2010**.

The rule, required under the *Fair and Accurate Credit Transactions Act*, was originally set to be implemented in April. The FTC first delayed enforcement until Aug. 1, then subsequently delayed it again until Nov. 1.

Its purpose is to require firms that handle personal data "to develop and implement written identity theft prevention programs to help identify, detect, and respond to patterns, practices or specific activities -- known as 'red flags' -- that could indicate identity theft," today's statement said.

The FTC has established a Web site with a how-to-guide for businesses.

In addition, Informative Research recently announced that it added sample policies and procedures to its broker Red Flags Toolkit in an effort to help its customers maintain compliance. Informative Research said mortgage brokers who don't service loans require a narrower scope of procedures than traditional lenders.

FTC Business Alert

Federal Trade Commission Bureau of Consumer Protection Division of Consumer & Business Education

New 'Red Flag' Requirements for Financial Institutions and Creditors Will Help Fight Identity Theft

Identity thieves use people's personally identifying information to open new accounts and misuse existing accounts, creating havoc for consumers and businesses. Financial institutions and creditors soon will be required to implement a program to detect, prevent, and mitigate instances of identity theft.

The Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) have issued regulations (the Red Flags Rules) requiring financial institutions and creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The programs must be in place by November 1, 2008, and must provide for the identification, detection, and response to patterns, practices, or specific activities — known as "red flags" — that could indicate identity theft.

Who must comply With the Red Flags Rules?

The Red Flags Rules apply to "financial institutions" and "creditors" with "covered accounts." Under the Rules, a **financial institution** is defined as a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other entity that holds a "transaction account" belonging to a consumer. Most of these institutions are regulated by the Federal bank regulatory agencies and the NCUA. Financial institutions under the FTC's jurisdiction include statechartered credit unions and certain other entities that hold consumer transaction accounts.

A **transaction account** is a deposit or other account from which the owner makes payments or transfers. Transaction accounts include checking accounts, negotiable

order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

A **creditor** is any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Accepting credit cards as a form of payment does not in and of itself make an entity a creditor. Creditors include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors. Most creditors, except for those regulated by the Federal bank regulatory agencies and the NCUA, come under the jurisdiction of the FTC.

A **covered account** is an account used mostly for personal, family, or household purposes, and that involves multiple payments or transactions. **Covered accounts** include credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking accounts, and savings accounts. A covered account is also an account for which there is a foreseeable risk of identity theft – for example, small business or sole proprietorship accounts.

Complying With The Red Flags Rules

Under the Red Flags Rules, financial institutions and creditors must develop a written program that identifies and detects the relevant warning signs — or "red flags" — of identity theft. These may include, for example, unusual account activity, fraud alerts on a consumer report, or attempted use of suspicious account application documents. The program must also describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The program must be managed by the Board of Directors or senior employees of the financial institution or creditor, include appropriate staff training, and provide for oversight of any service providers.

How Flexible Are The Red Flags Rules?

The Red Flags Rules provide all financial institutions and creditors the opportunity to design and implement a program that is appropriate to their size and complexity, as well as the nature of their operations. Guidelines issued by the FTC, the federal banking agencies, and the NCUA (ftc.gov/opa/2007/10/redflag.shtm) should be helpful in assisting covered entities in designing their programs. A supplement to the Guidelines identifies 26 possible red flags. These red flags are not a checklist, but rather, are examples that financial institutions and creditors may want to use as a starting point. They fall into five categories:

• alerts, notifications, or warnings from a consumer reporting agency; • suspicious documents; • suspicious personally identifying information, such as a suspicious address; • unusual use of — or suspicious activity relating to — a covered account; and • notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts. More detailed compliance guidance on the Red Flags Rules will be forthcoming. For questions about compliance with the Rules, you may contact **RedFlags@ftc.gov**.

The FTC, the nation's consumer protection agency, works to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity To Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman. **FOR THE CONSUMER 1-877-FTC-HELP ftc.gov FEDERAL TRADE COMMISSION** June 2008

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New Final Regulations Resolve Open Issues for Modifications of Commercial Mortgages Held by REMICs – But Modifications Held by Investment Trusts Remain Unanswered Pending Comments
[TD 9463, Rev. Proc. 2009-45, Notice 2009-79]

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News:
New Final REMIC Regulations Start September 16, 2009
Notice 2009-79 Comments re Investment Trusts are due November 14, 2009

New Final Regulations in Force:

On September 16, 2009, TD 9463 (26 CFR Parts 1 and 602) takes effect. TD 9463 **expands the list of permitted exceptions** under Section 1.860G-2(b)(3) to include (1) changes in **collateral, guarantees, and credit enhancement** and (2) clarifies when a release of a lien on real property securing a qualified mortgage does not disqualify the mortgage. Although these final regulations (TD 9463) resolve and clarify many issues for Modifications of commercial mortgages held by Real Estate Mortgage Investment Conduits (REMICs), the IRS and Treasury continue to study commentators' recommendations and solicit input concerning or comments on whether additional guidance may be appropriate on Modifications of Commercial Mortgage Loans Held by an Investment Trust (Notice 2009-79). Comments are due November 14, 2009.

Due to the current anemic credit markets, many commercial borrowers will not be able to refinance or satisfy the payment due at maturity (or conditions of refinance). With less liquidity and less sales, we see less take-outs and more liquidations. The accepted model of expecting to use the proceeds from refinancing to satisfy the principal balance due at maturity is facing great challenges and causing defaults, whether or not sufficient cash flow can satisfy the existing debt service.

At the Fitch MBS Conference in NYC (9/15/09), it was reported that, special servicers are seeing select short extensions or discounted payoffs. Short extensions were defined as 1 year or less, only to allow time for the borrower to seek foreseeable financing. The servicers are considering whether the impairment is temporary or permanent. If it is financially impracticable, it is likely to go to liquidation. Borrowers who can pay but are not willing, are more likely sent to liquidation. Borrowers who are in trouble and able to cure the temporary impairment are likely to obtain some limited extension to obtain financing or face liquidation. However, Borrowers should have a realistic plan in place with steps underway. Borrowers should contact the lender/servicer **before default or before reasonably foreseeable default** to afford the servicer more chances of fashioning a workout plan without invoking unnecessary costs, fees, or regulations. One tool used to advance this business judgment is found in the final regulations (TD 9463).

Historically:

Rev. Proc. 2009-45 applied to loan modifications effected on or after January 1, 2008. That "revenue procedure describes the conditions under which modifications to certain mortgage loans will not cause the Internal Revenue Service (Service) to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions."
Rev. Proc. 2009-45 at Section 3 describes a REMIC regular interest as:

> A regular interest is one that is designated as a regular interest and whose terms are fixed on the startup day. Section 860G(a)(1). In addition, a regular interest must (1) unconditionally entitle the holder to receive a specified principal amount (or other similar amount), and (2) provide that interest payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, at a variable rate).

Rev. Proc. 2009-45 at the following sections explains its history, intent and the consequences of non-compliance including the 100% tax on net income from prohibited transactions:

> .07 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99–313, 99th Cong., 2d Sess. 791–92, 1986–3 (Vol. 3) C.B. 791–92.
> .08 Section 1.1001–3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001–3(e) governs which modifications of debt instruments are "significant." Under §1.1001–3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.
> .09 Under §1.860G–2(b), related rules apply to determine REMIC qualification. Except as specifically provided in §1.860G–2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See §1.860G-2(b)(1). For this purpose, the rules in §1.1001–3(e) determine whether a modification is "significant." See §1.860G-2(b)(2). Thus, even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the qualification if the modifications cause less than substantially all of the entity's assets to be qualified mortgages.

> .10 Certain loan modifications, however, are not significant for purposes of §1.860G–2(b)(1), even if the modifications are significant under the rules in §1.1001–3. In particular, under §1.860G–2(b)(3)(i), if a change in the terms of an obligation is **"occasioned by default or a reasonably foreseeable default,"** the change is not a significant modification for purposes of §1.860G–2(b)(1), regardless of the modification's status under §1.1001–3.
> .11 Discussions between a holder or servicer and a borrower concerning a possible modification of a loan may occur at any time and need not begin only after the loan is in default or there is a reasonably foreseeable default.
> .12 The Service understands that many industry participants believe that a loan modification necessarily fails to be "occasioned by default or a reasonably foreseeable default" unless the loan is not performing or default is imminent.
> .13 Section 860F(a)(1) imposes a tax on REMICs equal to 100 percent of the net income derived from "prohibited transactions." The disposition of a qualified mortgage is a prohibited transaction unless the "disposition [is] pursuant to—(i) the substitution of a qualified replacement mortgage for a qualified mortgage . . . , (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation." Section 860F(a)(2)(A).

Rev. Proc. 2009-45 at Section 5 at 01 describes its applicability and what conditions are required for a "pre-modification loan" held by a REMIC or an investment trust as follows:

> .01 The pre-modification loan is not secured by a residence that contains fewer than five dwelling units and that is the principal residence of the issuer of the loan.
> .02 Either—(1) If a REMIC holds the pre-modification loan, then as of the end of the 3–month period beginning on the startup day, no more than ten percent of the stated principal of the total assets of the REMIC was represented by loans fitting the following description: At the time of contribution to the REMIC, the payments on the loan were then overdue by at least 30 days or a default on the loan was reasonably foreseeable; or
> (2) If an investment trust holds the pre-modification loan, then as of all dates when assets were contributed to the trust, no more than ten percent of the stated principal of all the debt instruments then held by the trust was represented by instruments the payments on which were then overdue by 30 days or more or for which default was reasonably foreseeable.

Final Regulations Effective September 16, 2009:

The author is pleased to report that TD 9463 **expands the list of permitted exceptions** under Section 1.860G-2(b)(3) to include:

> (1) changes in **collateral, guarantees, and credit enhancement** of an obligation and changes to the recourse nature of an obligation, so long as the obligation continues to be principally secured by an interest in real property, and

(2) clarify when a release of a lien on real property securing a qualified mortgage does not disqualify the mortgage.

The Summary of Comments on page 3 state:

> Except as specifically provided in §1.860G-2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See §1.860G-2(b)(1). For this purpose, the rules in §1.1001-3(e) determine whether a modification is "significant." See §1.860G-2(b)(2). Because of when it is treated as having been acquired in the deemed exchange, a significantly modified obligation generally fails to be a qualified mortgage. Section 1.860G-2(b)(3), however, contains a list of modifications that are expressly permitted without regard to the section 1001 modification rules.

The regulations conclude its position to the following key issues in part as follows:

> 1. The Lien Release Rule - The final regulations clarify that a release of a lien on real property that does not result in a significant modification under §1.1001-3 (for example, a release or substitution of collateral pursuant to the borrower's unilateral option under the terms of the mortgage loan) is not a release that disqualifies a mortgage loan, so long as the mortgage continues to be principally secured by real property after giving effect to any releases, substitutions, additions, or other alterations to the collateral. Similarly, the final regulations clarify that a lien release occasioned by a **default or a reasonably foreseeable default is not a release that disqualifies the mortgage**, so long as the principally-secured test continues to be satisfied. (Emphasis added)
>
> 2. The Requirement to Retest the Collateral Value - Generally, regulations require that an 80-percent test of the fair market value of the property be satisfied at origination, contribution but not after the start-up. Section 1.860G-2(a)(1) of the regulations provides that an obligation is principally secured by an interest in real property if the fair market value of the real property that secures the obligation equals at least 80 percent of the adjusted issue price of the obligation. TD 9463 states in part:
>
> > To ensure that a modified mortgage loan continues to be principally secured by an interest in real property, the IRS and the Treasury Department continue to believe that it is appropriate to retest at the time of the modification. Accordingly, the final regulations retain the retesting requirement, but amend the proposed standards for satisfying the principally secured test as described in section 3 in this preamble. In addition, to provide a more flexible standard for changes that do not decrease the value of real property securing the mortgage loan, the final

regulations provide an alternative method for satisfying the principally secured test.

For these types of changes (for example, a change from recourse to nonrecourse, or vice versa), the final regulations provide that a modified mortgage loan continues to be principally secured by real property if the fair market value of the interest in real property that secures the loan immediately after the modification equals or exceeds the fair market value of the interest in real property that secured the loan immediately before the modification. This alternative test is consistent with the general rule that a decline in the value of collateral does not cause a mortgage loan to cease to be principally secured by real property. The final regulations provide an example to illustrate the application of this alternative method for satisfying the principally secured test.

The final regulations also require retesting with respect to a lien release that is not a significant modification for purposes of §1.1001-3 (for example, a release of real property collateral pursuant to the borrower's unilateral option under the terms of the mortgage loan). Here as well, the principally secured test is satisfied if either the 80–percent test is satisfied based on the current value of the real property securing the mortgage or the value of the real property collateral after the modification is no less than the value of the real property collateral immediately before.

3. The Appraisal Requirement - TD 9463 in pertinent part states:
In response to these comments and to make the retesting requirement more consistent with the current rules for satisfying the 80-percent test at the startup day, the final regulations provide that the principally-secured test will be satisfied if the servicer reasonably believes that the modified mortgage loan satisfies the 80-percent test at the time of the modification. The final regulations provide that a servicer must base a reasonable belief upon a commercially reasonable valuation method. The final regulations set forth a nonexclusive list of commercially reasonable valuation methods that can be used by servicers for retesting purposes. These same commercially reasonable methods can be used under the alternative test to establish that the value of the real property collateral immediately after the modification is no less than the value of the real property collateral immediately before it.

4. Changes in the Nature of an Obligation from Nonrecourse to Recourse - TD 9463 states: The final regulations clarify that changes in the nature of an obligation from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse) are permitted so long as the obligation continues to be principally secured by an interest in real property.

5. Investment Trusts – TD 9463 in pertinent part states: The IRS and the Treasury Department understand that changes to the terms of commercial mortgage loans held by investment trusts may raise issues as to whether a "power to vary" is present, and commentators recommended that the scope of the regulation project

be expanded to permit investment trusts to modify commercial mortgage loans in the same manner as REMICs. To avoid a significant delay in the publication of these final regulations, their scope has not been expanded to include modifications of mortgage loans held by investment trusts. In a separate notice to be published in the Internal Revenue Bulletin contemporaneously with these final regulations, the IRS and the Treasury Department intend to request comments on this issue.

Comments on Notice 2009-79:

Notice 2009-79 specifies that issues in want of comment. A few miscellaneous and select issues or excerpts are as follows:

> The scope of the final regulations remained focused on § 1.860G-2(b)(3) and was not expanded to include modifications of commercial mortgage loans held by investment trusts. The IRS and the Treasury Department note that, although REMICs and investment trusts are often used to securitize mortgages, the requirements for classification as a REMIC are not identical to the requirements for classification as a trust. The IRS and the Treasury Department continue to study the commentators' recommendation and in this notice solicit input concerning whether additional guidance may be appropriate.
>
> In Rev. Rul. 90-63, 1990-2 C.B. 270, a trustee has the power to consent to changes in the credit support of debt obligations held by the trust, but the power is exercisable only if the trustee reasonably believes that the changes are needed to maintain the value of the trust assets by preserving the credit rating of the obligations. Rev. Rul. 90-63 concludes that this power to change the credit support, exercisable only if needed to preserve the value of the trust assets, is not a power to vary.
>
> The request for comments is as follows:

Request for Comments

> The IRS and the Treasury Department welcome further comments regarding what additional guidance, if any, is needed regarding modifications of commercial mortgage loans held by investment trusts. To be most useful, the comments should also analyze the extent to which the modifications at issue are consistent with existing case law and administrative pronouncements that govern whether an investment trust is classified as a trust for federal income tax purposes. Answers to the following questions would be particularly helpful:
>
> 1. Is it common business practice to hold commercial mortgage loans through an investment trust? If so, please describe the structure of an investment trust that holds commercial mortgage loans. Also, if commercial mortgages are held by a REMIC through an investment trust, please explain the utility of this structure and its business purpose.
> 2. Are there fact patterns which are not described in § 1.860G-2(b)(3)(i) and in which one or more modifications permitted to REMICs under

§ 1.860G-2(b)(3)(ii) through (vi) would be consistent with the case law and prior administrative pronouncements if carried out by an investment trust?

3. Are there alternative structures that would be consistent with the case law and prior administrative pronouncements and would allow the modified mortgage loans to be held by an investment trust? Are there any changes or additions to the REMIC rules that would be needed to facilitate these alternative structures?

Interested parties are invited to submit comments on this notice by November 14, 2009. Comments should be submitted in writing, and should include a reference to Notice 2009-79. Send submissions to: CC:PA:LPD:PR (Notice 2009-79), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2009-79), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, comments may be submitted electronically directly to the IRS via the following e-mail address: *Notice.comments@irscounsel.treas.gov*. Please include "Notice 2009-79" in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

By: Richard Ivar Rydstrom, Esq.
Chairman, CMIS (Coalition for Mortgage Industry Solutions)
www.CMISMortgageCoalition.org
rrydstrom@gmail.com

11/04/2009 [redacted]

#1109 P.001/001

[redacted]

You are approved for a Principal Reduction Loan Modification. Call 1.888.325.6432 to learn more.

[redacted]

[redacted]

Loan Number: [redacted]

October 29, 2009

Dear [redacted]

As your home loan servicer, we want to help you stay in your home and avoid foreclosure. We recently sent you information about the Home Affordable Modification Program, an initiative announced by the Federal Government to help homeowners who are finding it difficult to make their mortgage payment. Under this program, we will review your current financial situation to determine whether we can help you modify your mortgage.

As an alternative to the Home Affordable Modification Program, we are now **pleased to offer you a modification under a separate program. We have already approved you for this new loan modification program that will immediately change your outstanding principal balance and reduce the total amount due.** Your participation in this loan modification program will not require that you provide us with any financial documentation. This modification offer involves the following:

- The unpaid principal balance on your loan is $700,502.01 with a total estimated delinquent amount of $49,027.56 for a total amount due of $749,529.57. This offer would reduce this outstanding debt to $562,147.57.
- Your loan will be brought current by capitalizing past due amounts (we will add all past due amounts into the loan balance) which means you do not need to pay your past due amounts before getting your loan modified.
- Your modified loan will be fully amortizing with a fixed interest rate of 5.500% for the life of your loan which means you will be paying down the principal balance and the interest rate will never increase.
- We will extend the maturity date of your loan by 185 months to November 1, 2049 which means your loan will be paid in full by November 1, 2049.
- These changes to your loan term will result in a total monthly payment of $3,769.86 comprised of principal and interest $2,899.39 and escrow $870.47.

There are no fees associated with this modification program. To take advantage of this program, all you need to do is call us and make your first monthly payment at the new payment amount. You must call us no later than November 19, 2009 or this offer will expire and your existing loan terms will remain in effect.

We would like to discuss the differences of each modification program with you to help you decide which program you may prefer. **Please call us today at 1.888.325.6432 to learn more about your options** under these programs.

You may receive a phone call from one of our representatives to discuss the loan modification programs available to you and answer your questions. However, there is no need to wait for our call. Please call us now.

Sincerely,

Ken Scheller
Senior Vice President
Home Retention Division
BAC Home Loans Servicing, LP

Mortgages funded and administered by an ⊜ Equal Housing Lender.
♺ Protect your personal information before recycling this document.

Bank of America Home Loans

Mortgage Modification Safe-Harbors?
HAMP, Are We There Yet?
The Silent Modification Killers:
Sanctity of Contract, The 100% Tax, The Lawsuit!
New Insured Tradable Principal Reduction Modifications
New Treasury/IRS Notice 2009-36 and Rev. Proc. 2009-23 (Step 3)

By Richard Ivar Rydstrom, Esq., LL.M.
Chairman, Coalition for Mortgage Industry Solutions,
Pro Council Advisory
rich@procouncil.com

April 10, 2009, New Regulations? Another one of those days!

We must reach an objective tax safe-harbor for REMICS and Trusts before we can reach true homeowner affordability with mortgage loan modifications and reduce costly re-default rates. Behind the success or failure of a government modification or refinance program is the silent modification killers: sanctity of contract, the 100% tax, and the lawsuit. We recently got a new champ called HAMP (*Home Affordable Modification Program)*, and today the Treasury/IRS issued Notice 2009-36 and Rev. Proc. 2009-23 in full support. To have a successful modification or refinance program it must rest in consonance with the IRS. Business or investor machines such as banks, lenders, servicers, REMICS and mortgage pool trusts will not, and cannot effectuate en mass modifications (or short refinances) if it will violate contracts and tax regulations which penalize its interests severely in terms of taxation and litigation for doing so.

If we can reach true monthly cash-affordability for the troubled homeowner, we can convert non-performing mortgage assets into performing ones, and increase the bank and lender balance sheet valuations for *mortgage servicing rights* to *mortgage portfolios*, including the so-called legacy or toxic assets. That would unchain the steel bars wrapped all round the banks' covenant and capital ratio impairments, freeing up capital ratios and the capacity to lend.

Why is that we haven't been able to realize the hype that surrounds government modifications or refinance programs? Other than being drawn too narrowly in terms of eligibility, the past programs have failed to provide objective safe-harbors in terms of *best practices, litigation and taxation risks and exposures*. In addition to all the hoops and hurdles contained in rules, regulations and guidance concerning eligibility, lenders/servicers and the holders or investors (REMICS/Trusts) have no duty or mandate to modify a mortgage loan, even under the governments 'voluntary mandatory' insistence. Generally, the government and Congress, although publically saying otherwise, cannot order a party to a contract to do something not agreed or contemplated in that contract, save certain bankruptcy powers. However, even a bankruptcy court cannot cram-down a homeowner's mortgage loan (a law that might or might not be changing soon). The sanctity of contract is a paramount public policy that must be upheld to distinguish the U.S.A. from third world counties that do unilaterally change contracts after the fact to serve the government or those in power at the time. Pooling and Servicing Agreements (P&S) ultimately cover the agreement as to who, what, when, why

and how a servicer can modify a mortgage loan. Most P&S agreements simply don't allow for en mass modifications of mortgage loan assets and for good reasons. Not only does an investor in a mortgage pool have a right to rely on the risk/benefit of the investment, but modifications or changes in the rights and obligations of the mortgage itself or mortgage assets in a pool, could cause a breach of the investor and P&S agreements, and a 100% tax under IRC 860 et al.

As the government trips and falls over recent 'years' on their journey to 'mandate' 'voluntary' mortgage modifications and refinances, the IRS is taking baby steps to supply a modification or replacement mortgage safe harbor from the 100% tax consequence of violating its 'prohibited transaction' law and regulations. Treasury and the IRS have used Rev. Proc. 2007-72, 2008-28 (2008-23 I.R.B. 1054), 2008-47 (2008-31 I.R.B. 272) and now Notice 2009-36 and Rev. Proc. 2009-23 to affect change in IRC sections 860 A-G, 1001, and its regulations, including 301.7701-2 (-3, -4). For a discussion of Rev. Proc. 2008-28 (see www.hotneutral.com/html/irs_rev_proc_2008-28.html). For Public Comments filed by the author on Rev. Proc. 2008-28 (see www.hotneutral.com/html/comments_rev_proc.html).

As our recent past saw the government and the IRS push us closer to a solution using the Hope Now model, the failure of the implementation of HR 3221 (calling for short refinance principal modifications) caused a shift in congressional gears resulting in new legislation, laws and Treasury guidance, namely *Home Affordable Modification Program or "HAMP"* (and Home Affordable Refinance Program or HARP), among others.

HAMP has become the new champ however. Why do I say that? Well, the Treasury and the IRS have issued new Notice 2009-36 and Rev. Proc. 2009-23 aimed at affecting change regarding IRC sections 860D, 860F, 860G, 1001, 1.860G-2, 1.1001-3, including 301.7701-2 (-3, -4). That is important because those sections control the permissibility of modifications in mortgages in REMICS and TRUSTS. Prohibited transactions or significant modifications result in a 100% tax as set forth in section 860G(d)(1). So proposed and final regulations are necessary to create a safe harbor for en mass modifications of mortgages in ***'default'*** or ***'reasonably foreseeable default'***, or conflictingly, when '***default is imminent'?***

Notice 2009-36

Notice 2009-36 states: The Internal Revenue Service (Service) and the Department of the Treasury (Treasury) intend to issue regulations regarding the application of section 860G(d) of the Internal Revenue Code to certain amounts that may be paid to real estate mortgage investment conduits (REMICs) as part of the Home Affordable Modification Program (HAMP). Additionally, in pertinent part the Notice states:

> .01 Section 860G(d)(1) states that, except as provided in section 860G(d)(2), "if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in

> which the contribution is received equal to 100 percent of the amount of such contribution."
> .02 Section 860G(d)(2) provides that this tax does not apply to any cash contributions that are—
> (A) Contributions made to facilitate a clean-up call or a qualified liquidation;
> (B) Payments in the nature of a guarantee;
> (C) Contributions made during the 3-month period beginning on the startup day;
> (D) Contributions made to a qualified reserve fund by any holder of a residual interest in the REMIC; or
> (E) Other contributions permitted in regulations.
> .03 The question has arisen whether some of the payments that may be made to REMICs under the HAMP are "contributions" that are described in section 860G(d)(1) and, if so, whether they are covered by the exceptions in section 860G(d)(2).

The section .03 question is of great concern. However, how do ***payments*** differ from ***contributions***? To affect real change and supply a safe harbor from tax and litigation impediments, the regulations should not narrow the scope of the potential solution needed to bring about that change, moreover, the regulations should not design the "function" of the solution to this historic economic meltdown. The form of the regulations should follow function. Not only should "cash contributions" (.02 Section 860G(d)(2)) within the exceptions of section .02 A-E find an objective safe harbor, but payments, contributions, non-cash and cash equivalents should as well. For example, external and internal contractual and credit enhancements should fall under the exceptions as contemplated in sections: "(B) Payments in the nature of a *guarantee*;" and "(D) Contributions made to a *qualified reserve fund* by any holder of a residual interest in the REMIC;" or "(E) Other contributions permitted in regulations."

It may be necessary to broaden the language from 'cash contribution' or payment to include guarantees, non-cash or cash equivalents, reserve or guarantee funds, credit and contractual enhancements, etc. Some solutions to borrower monthly affordability may go beyond the reduction of interest rates and principal, and the extension of term amortizations/recasts to 40 years, and take the form of insurance or guarantees, deferred principal claw backs or equity sharing, property preservation payment fund guarantees, insured or guaranteed resale pieces necessary to revitalize the secondary liquidity market including the new U.S. covered-bond public policy, collateral enhancement devices, etc. How will additional collateral enhancements square in the proposed safe harbor, or the expressly mandated insurance guarantee provisions contained in the new laws such as: EESA of 2008 (HR 1424) sections, 102, 109, 110, 113, 123 (106) the FHA loan insurance guarantees for short-refinances (with principal reductions modifications per Section 257(e)(4)(c)) found in the Housing and Economic Recovery Act of 2008 (HR 3221), known as the Hope Program or other now public/private public policy programs?

For example, how would the principal reduction – shared appreciation modification solutions offered by Wilbur Ross in discussion with the author at the DC Executive Leadership Summit (Coalition for Mortgage Industry Solutions June 2008) reconcile with the new proposed regulations? How would the quarantined principal modification solutions (www.qbiesam.com) offered by the author reconcile with the new proposals? Moreover, how would the following expanded modification solution offered by Mr. Ross with Public/Private guarantees reconcile with the new proposal?

- Set up an insurance guarantee program.
- The government would guarantee 50% of the mortgage reduced to true net value after selling commissions, etc.
- The guaranteed amount (50% government amount) could be separately sold by holder/lender at a much lower yield than the mortgage itself.
- Enable the holder/lender to pay an Insurance Fee (2 ½% per year) to the government.
- At first sale, share proceeds of appreciation as follows: 1/3rdto Government; 1/3rdto Lender/Holder; 1/3rdto Borrower (Homeowner)
- Making it transferrable/assumable will lessen the need for new replacement mortgage. The 50% piece can come over to the next owner from the government guarantee at low rates and supply liquidity to the original lender. It can be backed by reinsurance.
- A similar version of this solution is also as follows:
    - the lender and insurer (FHA) are entitled to receive the lesser of 25% of gain appreciation or the amount forgiven or guaranteed, respectively,
    - the FHA to guarantee $1 of existing troubled mortgages on primary residences for each $1 forgiven by the lender,
    - the lender would be able to resell the guaranteed portion of its principal amount to create "liquidity"

If the key is to reduce borrower monthly payments greater than 20% to achieve significantly lower re-default rates, shouldn't the Treasury/IRS regulations support an architecture that is capable of achieving that goal? For example, both modifications with principal reductions of some 10 or 20% had re-default rates of 30% or 28% within 6 months, respectively. ***But, when payments decreased by 20% or more the re-default rate was only 21%. However, when payments were lowered only 10-20% the re-default rate was 49%*** *(Fitch quoted at* http://www.procouncil.com/html/cmis_emagazine.html ; CMIS Focus eMagazine www.cmisfocus.com).

Wouldn't solutions that reduce a borrower's monthly payments 20% or more serve all interests of a mortgage transaction including the borrower? Wouldn't this spark securitization and or covered bond liquidity in the mortgage/loan marketplace? Shouldn't the regulations allow for the capability of reconciling with the Pooling & Servicing Agreements, new laws including HAMP, and the changing FASB rules?

For references to the FASB Fair Value Hold-To-Maturity reconciliation debate, see:

> **A Spicket or Faucet? New Rules for 157 Fair Value Accounting**
> **April 2, 2009, The Delay That Will Live in Infamy|**
> The Time Has Come for the "Hold-To-Maturity Device" Products |
> Where can we find those things anyway? By Richard Ivar Rydstrom, Chairman
> [http://www.procouncil.com/html/fasb_ifrs.html]
>
> **October 22, 2008 FASB FAIR VALUE HOLD-To-MATURITY RECONCILIATION**: For more specific examples, see the AFN SPECIAL BROADCAST entitled *"Hidden Gems: Reconciling New Laws, Rules & Best Practices Guidance"* on October 22, 2008, as Richard Ivar Rydstrom delivers his 2nd update of the current changes in law, rules, regulations, and best practices guidance including new principal forgiveness solutions such as **QBieSam™ Modifications**, which is receiving widespread industry support. [http://www.procouncil.com/AFN_Rydstrom_10-22_1_.pdf]

The great news is that Notice 2009-36 states:

> If a payment is made to a REMIC under the HAMP, if the payment is described in section 860G(d)(1), and if the payment is not covered by any of the exceptions in section 860G(d)(2), then regulations to be issued by the Service and Treasury will provide an exception for that payment.

Consistent with the intent of Notice 2009-36 the final regulations should include broader language and specific examples that enhance the certainty that the industry is within an objective safe-harbor as it moves to create and implement solutions to the mortgage and economic crisis. For example, Notice 2009-36 also states: Pending the issuance of further guidance, taxpayers may rely on this Notice and, accordingly, *any payment* made to a REMIC under the HAMP will not be subject to the 100 percent tax set forth in section 860G(d)(1).

The ambiguity is introduced with the restrictive use of the word *payment* versus the expanding use of the concept *any payment*, contrasted with the use of the words *contribution* and *any cash contribution* elsewhere. Although it states *any payment*, clarity must be injected to avoid debate or uncertainty over whether a "contribution" is "any payment" or as stated herein, whether or not non-cash, cash-equivalent, or credit or contract enhancements meet the "any payment" or "Payments in the nature of a guarantee" definition.

The Need for Objectively Based Best Practice Standards

Accompanying Notice 2009-36 is Rev. Proc. 2009-23. Clarification is needed as to the uses of the terms "reasonably foreseeable default" versus "imminent default." The servicer is burdened with the business judgment as what constitutes a "reasonably foreseeable default" or "imminent default" and how each differs. The servicer is faced with the threat of creating a 'prohibited transaction' with a 100% tax and (investor) litigation exposure. An objectively based best practice standard in consonance with Rev.

Proc. 2009-23, other regulations and Pooling and Servicing agreements must be developed and accepted to achieve the public policy goal of effective loss mitigation or foreclosure prevention.

The current and past regulations have used both standards. In Rev. Proc. 2008-28 at section .08 Section 860F(a)(1) it indicates a REMIC is taxed equal to 100% of the net income derived from "prohibited transactions." It goes on to state:

> The disposition of a qualified mortgage is a prohibited transaction unless the disposition is pursuant to (i) the substitution of a qualified replacement mortgage for a qualified mortgage; (ii) a disposition incident to the foreclosure, default, or ***imminent default*** of the mortgage; (iii) the bankruptcy or insolvency of the REMIC; or (iv) a qualified liquidation. Section 860F(a)(2)(A).
>
> Rev. Proc. 2008-28 at section .07 states: Certain loan modifications, however, are not significant for purposes of § 1.860G-2(b)(1), even if the modifications are significant under the rules in § 1.1001–3 and thus cause section 1001 to apply. In particular, under § 1.860G–2(b)(3)(i), if a change in the terms of an obligation is "occasioned by default or a ***reasonably foreseeable default***," the change is not a significant modification for purposes of § 1.860G-2(b)(1), regardless of the modification's status under § 1.1001–3.
>
> Rev. Proc. 2008-28 generally applied to:
> 1. One to 4 unit single family residence
> 2. Owner occupied
> 3. Not more than 10% of stated principal of REMIC total assets are loans 30 days
> of more past due at time of securitization
> 4. Servicer reasonably believes a significant foreclosure risk is present
> 5. Terms of the modified loan are "less favorable" to the holder/lender
> 6. Servicer reasonably believes a modified loan will substantially reduce foreclosure risk.
>
> Rev. Proc 2008-47 (which replaced 2007-72) generally was consistent with 2007-72 principles as follows:
> 1. IRS will not challenge ...REMIC...as not within exception for modifications made in anticipations of default in IRS 1.860G-2(b)(3);
> 2. IRS will not assert ... disposition of qualified mortgage subject to 100% prohibited transaction tax;
> 3. IRS will not challenge ... REMIC on grounds that modification caused reissuance of REMIC regular interests;
> 4. If securitization is Grantor Trust, IRS will not assert ... modifications resulted in prohibited power to vary investments.

Effective for loan modifications on or after March 4, 2009, Rev. Proc. 2009-23 is a proposed safe harbor for modifications made pursuant to ***Home Affordable Modification Program or ("HAMP").*** Rev. Proc. 2009-23 at Section 2 at .02 it states in part:

> Delinquency is not a requirement for eligibility. Rather, because loan modifications are more likely to succeed if they are made before a borrower misses a payment, the HAMP is also intended to reach borrowers for whom ***default is imminent*** despite the fact that those borrowers are current on their mortgage payments. In determining whether ***default is imminent*** for a particular borrower, the HAMP takes into account a broad range of information, including whether the borrower has had a change in circumstances that causes financial hardship, or is facing a recent ***or imminent increase*** in the monthly mortgage payment that would likely create a financial hardship.

Rev. Proc. 2009-23 at Section 3 at .10 and .11 the concepts are both used without distinction. Section .10 and .11 state as follows:

> .10 Certain loan modifications, however, are not significant for purposes of §1.860G–2(b)(1), even if the modifications are significant under the rules in §1.1001-3. In particular, under §1.860G-2(b)(3)(i), if a change in the terms of an obligation is *"occasioned by default or* ***a reasonably foreseeable default****,"* the change is not a significant modification for purposes of §1.860G-2(b)(1), regardless of the modification's status under §1.1001–3.
> .11 Section 860F(a)(1) imposes a tax on REMICs equal to 100 percent of the net income derived from "prohibited transactions." The disposition of a qualified mortgage is a prohibited transaction unless the "disposition [is] pursuant to—(i) the substitution of a qualified replacement mortgage for a qualified mortgage …, (ii) *a disposition incident to the foreclosure, default,* ***or imminent default of the mortgage***, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation." Section 860F(a)(2)(A).

What is the distinction between an ***obligation that has a reasonably foreseeable default*** *and an* ***imminent default of the mortgage****?* We could all come up with an answer, albeit different, which is why we need an objective standard defined in the new final regs.

Section 3 it states the general qualification requirements of a REMIC interest as follows:

> .05 Under section 860D(a)(4), an entity qualifies as a REMIC only if, among other things, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of its assets consist of qualified mortgages and permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. See §1.860D–1(b)(3)(i). As a safe harbor, the amount of assets

other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the entity's assets. §1.860D–1(b)(3)(ii).

.06 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. See section 860G(a)(3)(A)(i).

.07 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99–313, 99th Cong., 2d Sess. 791–92, 1986–3 (Vol.3) C.B. 791–92.

.08 Section 1.1001–3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section1.1001–3(e) governs which modifications of debt instruments are "significant." Under §1.1001–3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.

.09 Under § 1.860G–2(b), related rules apply to determine REMIC qualification. Except as specifically provided in §1.860G–2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See§1.860G-2(b)(1). For this purpose, the rules in §1.1001–3(e) determine whether a modification is "significant." See §1.860G-2(b)(2). Thus, even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the qualification if the modifications cause less than substantially all of the entity's assets to be qualified mortgages.

Section 5 states: This revenue procedure applies to a modification made pursuant to HAMP of a mortgage loan that is held by a REMIC or by an investment trust. Section 4 at 03 states that: Section 301.7701-4(c) provides that an "investment" trust is not classified as a trust if there is a *power under the trust agreement to vary* the investment of the certificate holders. Section 6 states:

.01 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications are not among the exceptions listed in §1.860G-2(b)(3);

.02 The Service will not contend that the modifications are prohibited transactions under section860F(a)(2) on the grounds that the modifications result in one or more dispositions of qualified mortgages and that the

dispositions are not among the exceptions listed in section 860F(a)(2)(A)(i)–(iv);
.03 The Service will not challenge a securitization vehicle's classification as a trust under §301.7701–4(c) on the grounds that the modifications manifest a power to vary the investment of the certificate holders; and
.04 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications result in a deemed reissuance of the REMIC regular interests.

Section 7 refers us to other authority for the treatment of mortgage loans modified pursuant to certain **foreclosure prevention programs** (see Rev. Proc. 2008-47, 2008-31 I.R.B. 272, and Rev. Proc. 2008-28, 2008-23 I.R.B. 1054). The regulations should clarify an objective safe harbor to overcome the .05 requirement that 'the terms of the modified loan are *less favorable* to the holder than were the unmodified terms of the original mortgage loan." Some solutions however, may be viewed less favorable, equally favorable or more favorable depending upon how its viewed. For example, although less favorable to the holder in terms of immediate cash flow, but more favorable in terms of avoiding a non-performing asset with losses inherent in foreclosure or forced sale, it may be more favorable to the holder if held-to-maturity even though in the short and intermediate term it is more favorable to the borrower in terms of reduced monthly cash burdens. To promote the public policy of reaching affordable modifications, the regulations should foster new solutions not restrict them.

The Final Regs Must Contemplate Safe Harbors for New Guaranteed or Insured Principal Reduction Devices Tradable in the Secondary Market

The need to reach true borrower monthly affordability and liquidity in the secondary market is now paramount to fulfill public policy. In doing so however, it is important that the modification, as a solution, is not viewed as a *re-issue or a new instrument* or that it is not regarded as *significant or a prohibited transaction*. Section 3 indicates that: .03 A regular interest is one that is designated as a regular interest and whose terms are fixed on the startup day. Section 860G(a)(1). In addition, a regular interest must (1) unconditionally entitle the holder to receive a specified principal amount (or other similar amount), and (2) provide that interest payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, at a variable rate), and at .04: An interest issued after the startup day does not qualify as a REMIC regular interest.

It is important that certain modifications, especially those that forgive, reduce, or quarantine principal are not viewed as violating the regular interest rule requiring a *specified unconditional principal amount*. Principal modifications may not result in a specified unconditional principal amount (or other similar amount). If the FDIC/IndyMac principal reduction version creates a new first lien and a new (silent) second (or junior lien) more akin to a re-issuance of debt, and the deferred or silent second is only payable under shared appreciation conditions, would that satisfy the specified unconditional principal amount requirement? Quarantined principal modifications (which do not forgive principal but lower current payments on reduced principal) would generally not

create new issue debt and would retain its specified unconditional principal amount, which would seemingly satisfy that requirement if sufficient appreciation or equity exists at first sale or transfer. However, quarantined principal modifications with Hold-to-Maturity and Built-in-Equity provisions would satisfy all requirements because it would not forgive principal even if not repaid in full as specified at first sale/transfer. Private public guaranteed principal enhancements would provide a specified collateral substitute for the unpaid principal amount satisfying the requirements. Additionally, if guaranteed pieces were traded in the secondary market at discounts, it appears that the specified unconditional principal amount requirement would be satisfied even if the specified principal was not realized upon first sale/transfer or if held to maturity.

Final regulations should clarify these issues consistent with the intent of the new regulations for the REMIC and trust. Notice 2009-36 is clear in its intent to save the REMIC from adverse consequences as it clearly states:

> If a payment is made to a REMIC under the HAMP, if the payment is described in section 860G(d)(1), and if the payment is not covered by any of the exceptions in section 860G(d)(2), *then regulations to be issued by the Service and Treasury will provide an exception for that payment*…Pending the issuance of further guidance, taxpayers may rely on this Notice and, accordingly, any payment made to a REMIC under the HAMP will not be subject to the 100 percent tax set forth in section 860G(d)(1).

Final regulations which include objective safe harbors that allow for new and creative solutions consistent with HAMP and other programs would spark the genius of our democracy and lay the foundation and framework for creative and effective self-adjusting solutions for generations to come. Limitations that prohibit or hinder comprehensive solutions will preclude effective and efficient resolution of the pending economic challenges. To reach true borrower affordability we must create new products that pay for enhanced risk, but not necessarily in monthly cash terms. New modification products or devices will be necessary to reach affordability with non-cash or cash equivalents; with the use of Equivalent Risk Pricing ("ERP"). Credit Rating Agencies and new credit and contract enhancement product developers must be consulted prior to finalization of regulations, as such products are key for reaching our public policy goals. We are getting closer. The solution to the framework is within reach.

Hold-To-Maturity Device:
QBieSam™
Quarantined Built In Equity
Shared Appreciation Mortgage™
Quarantined Built In Equity
Shared Appreciation Modification™
www.qbiesam.com

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Newport Beach, Ca 92660
(949) 678-2218 (D)
(949) 606-9716 (F)
rich@procouncil.com
www.procouncil.com

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Thank You, Richard Ivar Rydstrom, Esq.
rrydstrom@gmail.com

MAKING HOME AFFORDABLE.gov

Making Home Affordable Program

Request For Modification and Affidavit (RMA)

Loan I.D. Number _____

I want to:	☐ **Keep the Property**	☐ **Sell the Property**
The property is my:	☐ **Primary Residence**	☐ **Second Home** ☐ **Investment**
The property is:	☐ **Owner Occupied**	☐ **Renter occupied** ☐ **Vacant**

BORROWER		CO-BORROWER	
BORROWER'S NAME		CO-BORROWER'S NAME	
SOCIAL SECURITY NUMBER	DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE OF BIRTH
HOME PHONE NUMBER WITH AREA CODE		HOME PHONE NUMBER WITH AREA CODE	
CELL OR WORK NUMBER WITH AREA CODE		CELL OR WORK NUMBER WITH AREA CODE	
MAILING ADDRESS			
PROPERTY ADDRESS (IF SAME AS MAILING ADDRESS, JUST WRITE SAME)		EMAIL ADDRESS	

Is the property listed for sale? ☐ Yes ☐ No Have you received an offer on the property? ☐ Yes ☐ No Date of offer _____ Amount of Offer $_____ Agent's Name: Agent's Phone Number: For Sale by Owner? ☐Yes ☐ No	Have you contacted a credit-counseling agency for help? ☐ Yes ☐ No If yes, please complete counselor contact information below. Counselor's Name: Counselor's Phone Number: Counselor's Email:
Who pays the Real Estate Tax bill on your property? ☐ I do ☐ Lender does Are the taxes current? ☐ Yes ☐ No Condominium or HOA Fee ☐ Yes ☐ No $ _____ Paid to:	Who pays the hazard insurance policy for your property? ☐ I do ☐ Lender Does ☐ Paid by Condo or HOA Is the policy current? ☐ Yes ☐ No Name of Insurance Co. _____ Insurance Co. Tel #: _____
Have you filed for bankruptcy? Yes ☐ No ☐ If yes: ☐Chapter 7 ☐ Chapter 13 Filing Date:_____ Has your bankruptcy been discharged? ☐Yes ☐No Bankruptcy case number _____	

If there are additional Liens/Mortgages or Judgments on this property, please name the person(s), company or firm and their telephone numbers.

Lien Holder's Name/Servicer	Balance	Contact Number	Loan Number

HARDSHIP AFFIDAVIT (use back of request for explanation IF necessary)

I (We) am/are requesting review under the Making Home Affordable program. I am having difficulty making my monthly payment because of financial difficulties created by *(Please check all that apply)*:

☐ **My** household income has been reduced. For example unemployment, underemployment, reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower.

☐ **My** monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt.

☐ **My** expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes.

☐ **My** cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time.

☐ Other _____

Explanation (continue on back of page 3 if necessary): _____

_____

INCOME/EXPENSES FOR HOUSEHOLD*

Number of People in Household

1		2		3	
Monthly Household Income		**Monthly Household Expenses/Debt**		**Household Assets**	
Monthly Gross wages	$	First Mortgage Payment	$	Checking Account(s)	$
Overtime	$	Second Mortgage Payment	$	Checking Account(s)	$
Child Support / Alimony*	$	Insurance	$	Saving s/ Money Market	$
Social Security/SSDI	$	Property Taxes	$	CDs	$
Other monthly income from pensions, annuities or retirement plans	$	Credit Cards / Installment Loan(s) (total minimum payment per month)	$	Stocks / Bonds	$
Tips, commissions, bonus and self-employed income	$	Alimony, child support payments	$	Other Cash on Hand	$
Rents Received	$	Net Rental Expenses	$	Other Real Estate (estimated value)	$
Unemployment Income	$	HOA/Condo Fees/Property Maintenance	$	Other _____	$
Food Stamps/Welfare	$	Car Payments	$		$
Other (investment income, royalties, interest, dividends etc) _____	$	Other _____ _____	$	Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.)	
Total (Gross income)	$	**Total Debt/Expenses**	$	**Total Assets**	$

***** ALL INCOME MUST BE DOCUMENTED ******

*** Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower please specify using the back of this form if necessary. You are not required to disclose Child Support, Alimony or Separation Maintenance Income, unless you choose to have it considered by your servicer.**

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER ☐ I do not wish to furnish this information		**CO-BORROWER** ☐ I do not wish to furnish this information	
Ethnicity:	☐ Hispanic or Latino ☐ Not Hispanic or Latino	**Ethnicity:**	☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	**Race:**	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex:	☐ Female ☐ Male	**Sex:**	☐ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type) & ID Number	Name/Address of Interviewer's Employer
This application was taken by: ☐ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet	Interviewer's Signature Date Interviewer's Phone Number (include area code)	

ACKNOWLEDGEMENT AND AGREEMENT

In making this request for consideration under the Making Home Affordable Program I certify under penalty of perjury:

1. That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure.
2. I understand that the Servicer, the U.S. Department of the Treasury, or its agents may investigate the accuracy of my statements, may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate Federal law.
3. I understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement under Making Home Affordable and may pursue foreclosure on my home.
5. That: my property is owner-occupied; I intend to reside in this property for the next twelve months; I have not received a condemnation notice; and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify.
6. I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner.
7. I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document.
8. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan; (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services in conjunction with Making Home Affordable; and (e) any HUD certified housing counselor.

Borrower Signature	Date	Co-Borrower Signature	Date

If you have questions about this document or the modification process, please call your servicer at _____. If you have questions about the program that your servicer cannot answer or need further counseling, you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.

888-995-HOPE™
Homeowner's HOPE™ Hotline

NOTICE TO BORROWERS

Be advised that you are signing the following documents under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution.
By signing the enclosed documents you certify, represent and agree that:
"Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling **1-877-SIG-2009** (toll-free), 202-622-4559 (fax), or www.sigtarp.gov. Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

Loan # [redacted]
MIN #

LOAN MODIFICATION AGREEMENT

(Providing for 60 Month Fixed 5% Interest Rate)

This Loan Modification Agreement (this "Agreement"), made as of the 1st day of August 2008, (the "Effective Date") between [redacted] (collectively, "Borrower") and American Home Mortgage Servicing, Inc., as servicer, ("Loan Servicer"), modifies (1) the mortgage, deed of trust, or security deed (the "Security Instrument") dated [redacted] and (2) the promissory note (the "Note"), bearing the same date as, and secured by, the Security Instrument (Borrower's obligation under the Note, Security Instrument and this Agreement hereinafter referred to as the "Loan"), which Security Instrument covers the real and personal property located at [redacted] OH [redacted]

(Property Address)

more fully described in the Security Instrument and defined therein as the "Property." All capitalized terms in this Agreement shall have the same meanings as set forth in the Note and Security Instrument, unless defined in this Agreement; all schedules and exhibits attached to this Agreement are incorporated into and made part of this Agreement; and all references to this Agreement include the schedules and exhibits.

In consideration of the mutual promises and agreements exchanged, Loan Servicer and Borrower agree that the Note and Security Instrument shall be modified hereby as follows:

1. As of the Effective Date, the amount payable under the Note and the Security Instrument (the "New Principal Balance") is U.S. [redacted] consisting of the unpaid amount(s) loaned to Borrower by Lender plus any accrued and unpaid interest and other amounts capitalized as set forth in Schedule "A," attached hereto and made a part hereof.

2. Borrower promises to pay the New Principal Balance, plus interest, to the order of Loan Servicer. Interest will be charged on the New Principal Balance at the yearly rate of 5.000% (the "Mod Rate"), for the sixty (60) month period from the Effective Date, up to and including July 31, 2013 (the "Mod Period"), at which time the interest rate shall revert to the rate as set forth in the Note (the "Note Rate"), as further provided below. If the Note is a fixed rate note, the Note Rate shall be the rate set forth in the Note from the expiration of the Interest Only Period until all sums evidenced by the Note are paid in full. If the Note is an adjustable rate note, the Note Rate shall be the rate that is scheduled to go into effect on the Change Date next following the end of the Interest Only Period, and as thereafter adjusted (all in accordance with the provisions of the Note); however, notwithstanding the foregoing, the Mod Rate shall continue in effect from the expiration of the Interest Only Period until said Change Date (such period, the "Transition Period"). During the Mod Period and the Transition Period, as applicable, Borrower will make monthly payments of principal and interest in the amount of U.S. [redacted] (the "Mod Payment"); provided, that the two Mod Payments due for August 1, 2008, and September 1, 2008, are made in a lump sum upon execution of this Agreement (the "Mod Start Payment"). AS MORE PARTICULARY SET FORTH IN PARAGRAPH 7, THIS AGREEMENT SHALL BE VOID AND NOT TAKE EFFECT UNLESS THE MOD START PAYMENT IN THE FORM OF A CASHIER'S CHECK OR CERTIFIED FUNDS, AND THIS AGREEMENT, ARE RECEIVED ON OR BEFORE SEPTEMBER 19, 2008.

After the Mod Start Payment is made, the next due Mod Payment will be due October, 1, 2008. Beginning on (a) August 1, 2013, with respect to a Note that is a fixed rate note, and (b) the first day of the month following the expiration of the Transition Period, with respect to a Note that is an adjustable rate Note, and in either case continuing thereafter on the same day of each succeeding month until the New Principal Balance and interest are paid in full, the monthly payment will consist of principal and interest at the Note

Borrower Initials here: ____ ____ ____ ____

Rate in an amount necessary to amortize the New Principal Balance, as then in effect, over the remaining term of the Loan. Loan Servicer will notify Borrower of the amount of the new monthly payment prior to the end of the Mod Period or Transition Period, as applicable. If on [redacted] (the "Maturity Date"), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay those amounts in full on the Maturity Date.

3. Borrower will comply with all covenants, agreements, and requirements of Note and Security Instrument, including without limitation, Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that Borrower is obligated to make under the Security Instrument; however, the following terms and provisions are canceled, null and void, during the Mod Period and the Transition Period, as applicable:

(a) all terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note; and

(b) all terms and provisions of any adjustable rate rider, or other instrument or document (if any) that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.

4. Borrower understands, acknowledges and agrees that:

(a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Note and Security Instrument shall also apply to default in the making of the modified payments under this Agreement.

(b) Except as herein modified, all covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect and none of Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Loan Servicer's or Note Holder's rights or remedies under the Note and Security Instrument, whether such rights or remedies arise there under or by operation of law. Also, all rights of recourse to which Loan Servicer and Note Holder are presently entitled against the Property, Borrower, any other property or any other persons in any way obligated for, or liable on, the Note and Security Instrument, are expressly reserved by Loan Servicer and Note Holder.

(c) Borrower has no right of set-off or counterclaim against Note Holder or Loan Servicer, or any defense to the obligations of the Note or Security Instrument.

(d) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.

(e) In addition to and simultaneously with Borrower's monthly payments as set forth in paragraph 2 above, Borrower shall be required pay to Loan Servicer, until such time as the New Principal Balance and interest are paid in full, a sum to provide for payment of amounts due for (i) yearly taxes and assessments which may attain priority over the Security Instrument as a lien on the Property, and (ii) yearly hazard or property insurance premiums, all in accordance with the terms and conditions of the Security Instrument. A waiver of this requirement by Loan Servicer shall not constitute a waiver of such requirement at any future date, and Loan Servicer specifically reserves the right, in its sole and absolute discretion, to impose such requirement at any time upon written notice to Borrower.

(f) Borrower shall make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement.

5. Borrower and Loan Servicer understand, acknowledge and agree that:

(a) If foreclosure proceedings have been commenced with respect to the Loan, upon payment of the Mod Start Payment and Loan Servicer's receipt of this Agreement, fully executed, Loan Servicer shall forbear from taking any further action in connection with any such foreclosure proceeding. In consideration of Lender's forbearance, Borrower hereby expressly waives the right to challenge or contest the foreclosure process initiated by Loan Servicer, Loan Servicer's attorney and/or the foreclosure trustee, including all acts or omissions prior to or subsequent to this Agreement, whether such acts or omissions were performed by Loan Servicer, Loan Servicer's attorney, the foreclosure trustee, and/or any party acting on behalf of the Loan Servicer, Loan Servicer's attorney and/or the foreclosure trustee. Borrower admits and recognizes that any and all postponements of a foreclosure sale, made during the term of this Agreement or in anticipation of this Agreement, are done by mutual consent of Borrower and Loan Servicer and that to the extent allowed by applicable law the foreclosure sale may be postponed from time to time until the loan is fully reinstated or the foreclosure sale is consummated.

(b) Time is of the essence of this Agreement, in particular the receipt by Loan Servicer of this Agreement (fully executed by Borrower and any Non-Obligor Mortgagors) and the Mod Start Payment. There are no grace periods with respect to the Mod Payment due under this Agreement, and failure to make timely payments as specified in paragraph 2 constitutes a breach of the terms of this Agreement. Notwithstanding the above, late charges as specified in the Loan Documents will continue to accrue as allowed by applicable law.

(c) If Borrower fails to make any of the payments specified in paragraph 2 on the due dates and in the amount stated, or otherwise fails to comply with each and all of the terms and conditions herein, Loan Servicer, at its sole option, may terminate this Agreement without further notice to Borrower. In such case, all amounts that are owing under the Note and Security Instrument, as amended by this Agreement, shall become immediately due and payable, and Loan Servicer shall be permitted to exercise any and all rights and remedies provided for in the Loan Documents, including, but not limited to, immediate commencement of a foreclosure action without further notice to Borrower, and/or resumption of a pending foreclosure action without further notice to Borrower, and/or conducting a pending foreclosure sale without further notice to Borrower.

(d) Loan Servicer represents that it has the authority to enter into this Agreement on behalf of the Note Holder.

(e) The terms, clauses, conditions and provisions of this Agreement are binding upon and shall inure to the benefit of all assignees, successors-in-interest, personal representatives, estates, administrators, heirs, devisees, and legatees of each of the parties hereto.

(f) Except as is otherwise provided for herein, this Agreement constitutes the entire agreement between the parties with reference to the subject matter hereof, and supersedes any prior agreement, oral or written, with respect thereto; and, in entering into this Agreement, no party is relying upon any representation, warranty, agreement, or covenants not set forth herein.

(g) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

6. To the extent that any word, phrase, clause, or sentence of this Agreement shall be found to be illegal or unenforceable for any reason, such word, phrase, clause, or sentence shall be modified or deleted in such a manner so as to make the Agreement, as so modified, legal and enforceable under applicable law, provided that should such modification or deletion materially diminish the benefit of this Agreement to any of Loan Servicer, Note Holder or Borrower, the Agreement shall be of no force or effect and the relationship of Loan Servicer, Note Holder and Borrower shall be entirely governed by the provisions of the Note and Security Instrument.

7. This Agreement shall be of no force or effect, and no action will be taken by Loan Servicer to cease collection and foreclosure activities relating to the Loan, unless and until Loan Servicer has received this Agreement, fully executed and initialed by Borrower and any Non-Obligor Mortgagors, along with the Mod Start Payment, in the form of a cashier's check or certified funds, no later than September 19, 2008. This Agreement is not considered "received" by Loan Servicer unless and until it has been delivered to Loan Servicer at 4650 Regent Blvd., Suite 100, Irving, TX 75063, and internally date stamped. Furthermore, this Agreement shall be of no force or effect if Borrower files a bankruptcy petition prior to Loan Servicer's receipt of this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands hereunto as of the date written below.

American Home Mortgage Servicing, Inc.

By: _____

_____
Borrower

_____
Borrower

_____
Borrower

_____
Borrower

NON-OBLIGOR MORTGAGORS

For purposes of this Agreement, the undersigned are not Borrowers; they are "Non-Obligor Mortgagors" (that is, this term is defined to mean (i) signatories on the Security Instrument but not obligated on the Note or (ii) persons not obligated on the Note but added to title on the Property after the origination of the above-referenced Loan). By his/her/their signature(s) below on this Agreement, the undersigned Non-Obligor Mortgagors acknowledge and agree (x) that his/her/their interest in the Property was subject to the Security Instrument and remains subject to the Security Instrument as modified by this Agreement, and (y) that he/she/they are bound by all of the terms and conditions of this Agreement, except to the extent that such terms and conditions pertain to any promise or obligation to pay Loan Servicer or Note Holder any amount.

Acknowledged and agreed to: _____ Date:
Non-Obligor Mortgagor

Acknowledged and agreed to: _____ Date:
Non-Obligor Mortgagor

Loan Modification Agreement
Schedule A

Name of Borrower(s): [redacted]

Loan Number: [redacted]

DESCRIPTION OF TOTAL AMOUNT DUE	TOTAL DUE
Current Principal Balance	$[redacted]
Plus Delinquent Interest Through 06/30/2008:	$[redacted]
Plus Advances Made for Attorneys' Fees/Costs/Inspections	$[redacted]
Plus Escrow (tax and insurance) Shortage (including escrow advances if applicable)	$[redacted]
Plus Unpaid Late Charges	$[redacted]
Plus Non-Sufficient Funds (returned check fees)	$[redacted]
Less Suspense Balance (funds held that will reduce amount owed)	$[redacted]
New Principal Balance	$[redacted]

New Mod Payment Amount Effective From 08/01/2008 Through 07/31/2013*:	
Principal and Interest (P&I) or Interest Only	$[redacted]
Monthly Escrow Payment (for Taxes and Insurance)**	$[redacted]
Total Payment Applicable During Mod or Interest Only Period**	$[redacted]

* If your loan is an ARM, this mod payment amount will be in effect through the payment due on the first Change Date that occurs after 07/31/2013.

** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrowers' Initials _____ _____ _____ _____

AMERICAN HOME MORTGAGE Servicing, Inc.

FORBEARANCE AGREEMENT

Re Loan No. [redacted]
Property Address [redacted] COLUMBUS OH 43229
Borrower(s) [redacted]

This Forbearance Agreement (hereinafter "Agreement"), is made and entered into as of 12/15/2008, by and between American Home Mortgage Servicing, Inc. (hereinafter "Lender") and [redacted] HAMMILL (hereinafter collectively referred to as "Borrowers").

RECITALS:

Borrowers executed that certain promissory note and any riders or addenda thereto (hereinafter the "Note") and mortgage, deed of trust or deed to secure debt (hereinafter "Security Instrument") on or about , in the original principal amount of USD $[redacted] (hereinafter collectively referred to as "Loan" or "Loan Documents"); and

The Loan is secured by the Security Instrument, which covers, the premises commonly known as [redacted] COLUMBUS OH 43229 (hereinafter referred to as "Property"); and

Borrowers have defaulted in making their payments under the Loan and desire to remedy that default by bringing the Loan current; and

Lender has stated that it will consider forgoing pursuit of the legal remedies available to it as a result of Borrowers' aforementioned default under the Loan, provided that the Borrowers execute and fulfill the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the Lender forgoing pursuit of its legal remedies under the Loan Documents relating to foreclosure and sale of the Property due to the aforementioned default, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrowers, intending to be legally bound, understand, acknowledge, covenant and agree as follows:

STATE'S EXHIBIT B

PENGAD 800-631-6989

1. Recitals: The above recitals are true and correct and incorporated herein by reference
2. Contractual Due Date: Borrowers are in default in making their monthly payments under the Loan Documents and the contractual due date of the Loan as of the date of this Agreement is 09/01/2008 (that is, the last installment paid by Borrower's was the one which came due on 08/01/2008)
3. Arrearage: As of the date of this Agreement, the total sum necessary to bring the Loan current, including, but not limited to, principal, accrued interest, accrued late charges, Lender advances, escrow arrearages and foreclosure fees and costs, is $ 5966.18 (hereinafter referred to as the "Arrearage"). The Arrearage is itemized in Exhibit A, attached hereto and made a part hereof. It is anticipated that Payment of the full amount of the Arrearage by Borrowers to Lender pursuant to the terms of this Agreement will fully satisfy the terms of this Agreement and bring the Loan current, at which time regular monthly payments will resume pursuant to the terms of the original Loan Documents. Borrowers understand that the Arrearage set out in Exhibit A is the lump sum necessary to bring the loan current in one payment good through the date thereon, but that paying the Arrearage over time, as contemplated in this Agreement, may increase the overall sum paid. This increase may, for example, be due to monthly charges, such as late charges, which continue to accrue pursuant to the Loan Documents during the pendency of this Agreement because the Loan is delinquent. Other possible reasons for a higher total when paying over time are an increase in the monthly amount due because of interest rate changes (on adjustable rate mortgages), and interest on secured advances. Should Borrowers bring the loan current more quickly than contemplated under the Agreement, the overall cost may be lower due to the accrual of fewer charges such as late charges and interest on secured advances.
4. Increased Monthly Payment: Borrowers must make all Loan payments pursuant to the following terms and conditions:
   a. As a prerequisite to the validity of this Agreement, a down payment in the amount of $ 1975.00, must be received by Lender no later than 5:00 P.M. Pacific Standard Time, 12/16/2008 either: (i) via overnight mail sent to the attention of American Home Mortgage Servicing, Inc., 4600 Regent Blvd., Suite 200, Irving, TX 75038-1730 in the form of guaranteed funds (certified check, cashiers check or money order) made payable to American Home Mortgage Servicing, Inc. or (ii) via Money Gram, receive code 4513 or Western Union "Quick Collect" to Code City: OPTION, Code State: CA.
   b. During the term of this Agreement, Borrowers shall make increased monthly payments in the amount of $ 2314.58, which includes the full regular monthly payment under the Loan Documents plus a pro rata portion of the Arrearage (both amounts together hereinafter referred to as the 'Plan Payment'), which must be received by Lender no later than 5:00 P.M. Pacific Standard Time, commencing on 12/17/2008 and continuing on the same date of each and every month through and including 02/17/2009. The Plan Payment is itemized in Exhibit B, attached hereto and made a part hereof. Borrowers must send the Plan Payment either (i) in the form of guaranteed funds (certified check, cashiers check or money order) made payable to American Home Mortgage Servicing, Inc., and mailed or delivered to Lender at American Home Mortgage Servicing, Inc., 4600 Regent Blvd., Suite 200, Irving, TX 75038-1730 or (ii) via Money Gram, receive code 4513 or Western Union Quick Collect to Code City: OPTION, Code State: CA.
   c. All payments on the Loan made pursuant to this Agreement shall be clearly marked with the above-referenced Loan number and may be applied to any amounts outstanding on the Loan, including fees and costs, in the order and proportion deemed appropriate by Lender.
   d. As to each and every payment made under this Agreement, time shall be strictly of the essence and there shall be no grace period.

5. Collection Efforts to Continue: This Agreement shall be of absolutely no force or effect, and no action will be taken by Lender to cease collection activities and/or postpone the foreclosure or sale of the Property (if applicable), unless and until Lender has received both this Agreement, fully executed by the Borrowers, and any required down payment in the form and in the manner as outlined in subparagraph 4a above no later than 12/16/2008 This Agreement is not considered "received" by Lender unless and until it has been internally date stamped by Lender and delivered to American Home Mortgage Servicing, Inc. 4600 Regent Blvd., Suite 200, Irving, TX 75063-1730, or successfully faxed to 866-435-8113 Faxed copy of the Agreement may be used for any purposes as if it were the original.

6. Late Charges and Additional Fees and Costs; Increase in Plan Payment:

   a. Unless prohibited by state law, late charges, as set forth in the Note, shall continue to accrue during the term of this Agreement until such time as the Loan is brought current. Borrowers understand that any such late charges may be in addition to (and not subsumed within) the Plan Payments, but must also be paid to satisfy the terms and conditions of this Agreement and bring the Loan current. This is because a late charge for an installment may not be accrued unless that installment remains outstanding past the late charge accrual date.

   b. Additional fees, expenses and charges relating to the Loan that have not yet been billed to or incurred by Lender or debited to the Loan account, including but not limited to appraisal and broker price opinion fees, property inspection fees, Lender advances for payment of Borrowers' taxes and/or insurance, attorney fees and expenses, and collection fees (hereinafter, together with late charges, collectively referred to as "Additional Costs"), are not included in the Plan Payment and must be paid by Borrowers in order to fully satisfy the terms and conditions of this Agreement and bring the Loan current.

   c. In order to ensure payment by Borrowers of such Additional Costs, and in Lender's sole and absolute discretion, the Plan Payment amount may be subject to increase, upon written notice by Lender to Borrowers, to an amount necessary to bring the Loan current by the final Plan Payment due date under this Agreement.

7. Adjustable Rate Note; Increase in Plan Payment: If the Note is an adjustable rate instrument, the Plan Payment may be subject to increase pursuant to interest rate adjustments as dictated by the terms of the Note. If the Plan Payment is not increased despite an interest rate increase pursuant to the Note, the sums accrued but unpaid due to the interest rate increase ("Additional Sums Due Per Rate Change") must also be paid to satisfy the terms and conditions of this Agreement and bring the Loan current. If the interest rate is adjusted downward under the terms of the Note, the Plan Payment will not decrease, but any surplus will be applied to the Arrearage. In order to ensure payment by Borrowers of such Additional Sums Due Per Rate Change, and in Lender's sole and absolute discretion, the Plan Payment amount may be subject to increase, upon written notice by Lender to Borrowers, to an amount necessary to bring the Loan current by the final Plan Payment due date under this Agreement.

8. Taxes and Hazard Insurance; Increase in Plan Payment: Should Lender require Borrowers, pursuant to the terms of the Loan Documents, to establish an impound account with Lender for payment of taxes and insurance, or should the monthly contribution to any existing impound account increase pursuant to a periodic escrow analysis, the Plan Payment may increase accordingly. Should the monthly contribution to any existing impound account decrease pursuant to a periodic escrow analysis, the Plan Payment will not decrease, but any surplus will be applied to the Arrearage. In order to ensure payment by Borrowers of any additional sums due pursuant to an increase in the monthly escrow contribution, and in Lender's sole and absolute discretion, the Plan Payment amount may be subject to increase, upon written notice by Lender to Borrowers, to an amount necessary to bring the Loan current by the final Plan Payment due date under this Agreement.

9. Credit Reporting: Until such time as the Loan is brought current (either by successful completion of the terms of this Agreement or a lump sum payment of the Arrearage), the Loan remains delinquent and the Lender must continue to report the Loan as delinquent to the credit reporting agencies to which Lender reports.

10. Pending Foreclosure Action: In the event that a foreclosure action is pending relating to the Loan at the time this Agreement becomes effective (as contemplated in paragraph 5 above), the foreclosure action will not be dismissed, but Lender shall use its best efforts to ensure that the foreclosure is placed on hold pending satisfaction by Borrowers of the terms of this Agreement. Lender shall retain the right to continually postpone the foreclosure, file notices with the court, publish the pending foreclosure, complete service or otherwise take any action reasonably necessary to maintain the "Pending" status of the foreclosure action during the term of this Agreement. Furthermore, if Lender or its designated agent has, prior to the execution of this Agreement, submitted any motion or order to the court, Lender shall not be required to withdraw such motion or order by virtue of this Agreement, and the court shall be permitted to consider such motion and/or enter any appropriate order in response to such motion. In the event a judgment of foreclosure is entered or a foreclosure sale or "law day" is held after this Agreement is offered to Borrowers, but before it is effective by virtue of their timely performance, it shall be automatically withdrawn.

11. Inability to Postpone: If a foreclosure sale or "law day" has been scheduled to occur shortly after Lender has received both the signed Agreement and any required down payment from the Borrowers, it may not be possible for Lender to stop the sale of the Property or vesting of title to the Property in a third party purchaser. In such event, the down payment will be returned to the Borrowers and this Agreement shall have no force or effect. Furthermore, Lender assumes no liability, and Borrowers hereby absolve Lender from liability, for failure to stop the sale or otherwise unwind, rescind or reverse the sale or vesting should such sale or vesting occur. If Lender is unable to stop the sale of the Property and Borrowers and Lender subsequently undertake any effort to unwind, rescind or reverse the sale or vesting, then any fees and costs associated with such activity shall be added to the Loan balance.

12. Material Breach and Termination of Agreement: The Borrowers shall be considered to be in material breach of this Agreement and this Agreement shall terminate at the option of Lender without further notice to Borrowers at under any of the following circumstances:

    a. Borrowers fail to strictly comply with any of the terms of this Agreement or the Loan Documents (for example, by failing to timely pay any of the payments called for in this Agreement).

    b. The Property is abandoned or left vacant for more than sixty (60) days.

    c. Borrowers transfer any interest in the Property without Lender's prior written consent.

    d. The facts or circumstances relating to Borrowers' financial condition, which influenced Lender to enter into this Agreement, are substantially changed for the worse.

    e. Incorrect or fraudulent information was submitted by Borrowers to induce Lender to enter into this Agreement.

13. Effect of Termination: If this Agreement is terminated due to material breach as set forth above, the Lender shall be entitled to pursue its remedies pursuant to the terms and conditions of the Loan Documents as if this Agreement had never existed. If, upon termination of this Agreement, the Borrowers remain in default under the Loan Documents, Lender shall be entitled to commence or resume foreclosure without the necessity of re-providing the Borrowers with any legally required notices that were duly provided by Lender to Borrowers prior to execution or during the term of this Agreement. Lender's waiver of a breach by Borrower shall not be construed as a waiver of any subsequent breach or failure of the same term or condition or a waiver of any other term or condition in this Agreement, nor shall it establish or evidence any course of dealing between the parties.

Loan Number# [redacted] ID# [redacted]

14. No Defenses; Release: By their execution and delivery to Lender of this Agreement, the Borrowers acknowledge that the Arrearage is the Borrowers' full responsibility and was produced solely by the actions or inactions of the Borrowers. Furthermore, Borrowers agree that they have no defense, setoff or counterclaim related to the Loan or the Property, or to Lender's activities relating to the Loan or the Property, and Borrowers hereby voluntarily release, discharge and agree not to sue Lender for any and all claims, demands, controversies, damages, actions, causes of action, liabilities, rights, costs (including attorney fees and court and litigation costs and expenses), indemnities; obligations or losses of any kind or nature whatsoever, whether at this time known or unknown, for or by reason of any act, omission, event, transaction, matter or cause, arising from or relating to the Loan, the origination of the Loan or the servicing of the Loan, or any dispute arising from or relating to the Loan, the origination of the Loan or the servicing of the Loan, or any of the facts upon which any such dispute is based.

15. Advice of Attorney: The Borrowers warrant and represent that in executing this Settlement Agreement they have relied upon legal advice from the attorney of their choice; that this Agreement has been read by the Borrowers and such attorney, and its consequences (including risks, complications, and costs) have been completely explained to Borrowers by that attorney; and Borrowers fully understand the terms of this Agreement.

16. Loan Documents: All of Borrowers' rights and responsibilities under, and all of the terms and conditions of the Note and Security Instrument, shall remain in full force and effect except as expressly modified by this Agreement. Nothing contained in this Agreement shall be construed to impair the Security Instrument or affect or impair Lender's rights or powers under the Loan Documents to recover any sum due under the terms of the Note, including any Arrearage and Additional Costs.

17. Severability: To the extent that any word, phrase, clause, or sentence of this Agreement shall be found to be illegal or unenforceable for any reason, such word, phrase, clause, or sentence shall be modified or deleted in such a manner so as to make the Agreement, as so modified, legal and enforceable under applicable law, provided that should such modification or deletion materially diminish the benefit of this Agreement to either Lender, in its sole discretion and election, or Borrowers, in their sole discretion and election, the Agreement shall, only after written notice given by the electing party to the other party, be of no force or effect and the relationship of Lender and Borrowers shall be entirely governed by the provisions of the Loan Documents.

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Borrower: [redacted]

Dated: 12/17/08

Borrower: _____

Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

Loan Number# [redacted] ID# : [redacted]

EXHIBIT A

Borrower Name : [redacted]
Reinstatement Quote for Loan # [redacted]
Good Through Date : 12/23/2008

2 Payments Due @ 936.24	:	$ 1872.48
2 Payments Due @ 935.13	:	$ 1870.26
Foreclosure Fees and Costs	:	$ 1971.00
Other Fees	:	$ 94.60
Late Charges	:	$ 157.84
Total Servicer Reinstatement Amount	:	$ 5966.18

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Borrower: [redacted]

Dated: 12/17/08

Borrower: _____

Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

Loan Number# [redacted] ID# [redacted]

EXHIBIT B

PLAN PAYMENT DETAILS for Loan : [redacted]

	Due Date	Payment Amount
Deposit	12/16/2008	$ 1975.00
1	12/17/2008	$ 2314.58
2	01/17/2009	$ 2314.58
3	02/17/2009	$ 2314.58
Total		$ 6943.74

		Term	
RI Amount:			$ 5966.18
Payment	$ 935.13	3	$ 2805.39
Late Charge	$ 39.46	3	$ 118.38
Prop Insp	$ 9.60	3	$ 28.80
Total			$ 8918.75
Less Deposit :			$ 1975.00
Total Plan Installments:			$ 6943.75

Borrower: [redacted]

Dated: 12/17/08

Borrower: _____

Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

46
2483.60

NOTICE TO BORROWERS :

Please be advised that the total listed on this Exhibit B is necessarily based on several assumptions. First, it presumes that each installment listed hereon will be made timely, according to the above schedule. Should reinstatement be made early, certain of the anticipated but not yet accrued charges (such as, for example, the late charges and property inspection fees listed in the right hand column that has not yet come due at the time or reinstatement), will not be included in the amount necessary to reinstate. Thus, should you desire to reinstate early, please call (877)-304-3100 to get an up-to-date reinstatement figure.

Second, any increase in the total amount due pursuant to a change caused by additional fees and costs (see Paragraph 6 of the Agreement), an interest rate increase (see Paragraph 7 of the Agreement), or an increase in the escrow (tax or insurance) component of your payment (see Paragraph 8 of the Agreement) must be paid before the Loan is considered fully reinstated pursuant to the Agreement. As such, the final Plan Payment - or an early reinstatement - may differ significantly from the amount set forth in this Exhibit B.

The component sums (i.e. Arrearage, Payment, Late charge, etc.), which together comprise the "Total" on this Exhibit B, rather than being equally distributed in the plan payments are applied as permitted by Paragraph 4c of the Agreement in an order designated by Lender, such as, for example, payment of accrued fees and costs prior to application to other sums due.

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Loan Number# [redacted] ID# [redacted]

Borrowers acknowledge that they have read and understand that above notice.

Borrower: [redacted] Borrower: _____

Dated: 12/17/08 Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

AMERICAN HOME MORTGAGE SERVICING, INC.

SECURITY RETENTION AGREEMENT

(Providing for a Fixed Interest Rate)

Re: Loan Number: [redacted]
Property Address: [redacted]
Borrower(s): [redacted]

This Security Retention Agreement (hereinafter "**Agreement**"), is made and entered into as of August 1, 2009 (the "**Effective Date**") by and between American Home Mortgage Servicing, Inc. (hereinafter "**Loan Servicer**") and [redacted] (hereinafter collectively referred to as "**Borrowers**").

RECITALS:

Borrowers executed that certain promissory note (hereinafter "**Note**") and mortgage, deed of trust or deed to secure debt (hereinafter "**Security Instrument**") on or about October 28, 2005, in the original principal amount of U.S $104,000.00, (hereinafter collectively referred to as "**Loan**" or "**Loan Documents**"); and

Borrowers secured the Loan by virtue of the Security Instrument, covering the premises commonly known as [redacted] (hereinafter referred to as "**Property**"); and

Borrowers debts have been discharged pursuant to a Chapter 7 bankruptcy, but Loan Servicer retained and reserved its right under the Security Instrument to foreclose on the Property; and

Borrowers have informed Loan Servicer that it wishes to remain in the Property and continue to make payments on the Loan; and

Loan Servicer has stated that it will forego pursuit of the legal remedies available to it, provided that Borrowers execute and fulfill the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the Loan Servicer forgoing pursuit of its legal remedies under the Security Instrument relating to foreclosure and sale of the Property, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrowers understand, acknowledge, covenant and agree as follows:

STATE'S EXHIBIT C

PENGAD 800-631-6989

1. **Recitals:** The above recitals are true and correct and incorporated herein by reference.

2. **No Personal Liability:** ***Since Borrowers' debts have previously been discharged pursuant to a Chapter 7 bankruptcy and since Borrowers did not sign an agreement reaffirming the Loan, this Agreement is not to be construed as an attempt to collect a debt from Borrowers personally. Borrowers understand and Loan Servicer acknowledges that Loan Servicer has no right and no intention to enforce the Loan against Borrowers and that Loan Servicer's only recourse, if the Loan is not current as set forth in the Loan Documents and this Agreement, is to foreclose on the Property.***

3. **Forbearance by Loan Servicer:** Even though Borrowers are no longer personally liable to repay the Loan, Loan Servicer reserves its right under the Security Instrument to foreclose on the Property, which Borrowers acknowledge and agree they pledged as security for the Loan. Borrowers hereby request that Loan Servicer forbear from pursuing foreclosure and enter into this Agreement, which specifies the steps they must take in order to allow them to retain the Property. In consideration of Borrowers' agreement to abide, and only for so long as they continue to abide, by all of the terms and conditions of this Agreement, Loan Servicer hereby agrees to forbear from foreclosing on the Property.

4. **Payments:** In consideration of Loan Servicer forbearing from foreclosing and allowing Borrowers to remain in the Property, Borrowers must make monthly Property retention payments ("**Payment**" or "**Payments**") in the amounts and by the dates, and in accordance with the terms and conditions, as set forth in this Agreement.

    a. As of the Effective Date, the amount payable under the Note and the Security Instrument is U.S. $114,699.31 (the "**New Principal Balance**"), consisting of the unpaid amount(s) loaned to Borrowers by Lender plus any accrued and unpaid interest and other amounts capitalized as set forth in Schedule "A," attached hereto and made a part hereof.
    b. Borrowers shall pay an earnest money payment (the "**Deposit**") in the amount of U.S. $1,350.00, which Deposit must be received by Loan Servicer no later than 5:00 P.M. Eastern Time, (N/A), either: (i) via overnight mail sent to the attention of American Home Mortgage Servicing, Inc., 6501 Irvine Center Dr, Irvine CA 92618, ATTN: DD-HPO, in the form of guaranteed funds (certified check, cashiers check or money order) made payable to American Home Mortgage Servicing, Inc., or (ii) via Western Union "quick collect" to Code City: Option, Code State: CA.
    c. The Deposit shall be deducted from the New Principal Balance, for a total outstanding balance on the Loan of U.S. $113,349.31 (the "**Reduced Principal Balance**").

d. Interest shall be charged on the Reduced Principal Balance at the yearly rate of 5.25%, from the Effective Date until November 1, 2035 (the "**Maturity Date**").

e. Borrowers shall make Payments of principal and interest (plus any amounts due for taxes and insurance as set forth in Schedule "A") in the amount of U.S. $663.69. All Payments must be received by Loan Servicer, clearly marked with the above-referenced Loan number, no later than 5:00 P.M. Eastern Time, beginning on September 1, 2009, and continuing on the same date of each and every succeeding month until the Reduced Principal Balance and interest are paid in full. If the Loan is an adjustable-rate mortgage ("ARM") loan and Borrower receives an ARM adjustment notice prior to the Payment beginning date indicated in the preceding sentence, Borrowers should ignore such notice and make Payments in accordance with this Agreement. If on the Maturity Date, Borrowers still owe amounts under the Loan, as amended by this Agreement, Borrowers will pay these amounts in full on the Maturity Date.

f. Payments are subject to increase at any time pursuant to paragraphs 5 and 6 below.

g. As to each and every Payment made under this Agreement, ***time shall be strictly of the essence and there shall be no grace period.***

5. Additional Fees and Costs; Increase in Payment:

a. Additional fees, expenses and charges relating to the Loan that have not been billed to or incurred by Loan Servicer or debited to the Loan account as of the Effective Date (including but not limited to late fees, appraisal and broker price opinion fees, property inspection fees, Loan Servicer advances for payment of Borrowers' taxes and/or insurance, attorney fees and expenses, collection fees and any other expenses incurred by Loan Servicer to protect its security interest in the Property), or clerical errors later discovered in the calculation of the Payments, (all of which fees, expenses, charges and errors, together with late charges, are collectively referred to as "**Additional Costs**"), are not included in the Payment amount and must be paid by Borrowers in order to fully satisfy the terms and conditions of this Agreement.

b. In order to ensure payment by Borrowers of such Additional Costs, Loan Servicer may, upon written notice by Loan Servicer to Borrowers and in Loan Servicer's sole and absolute discretion, either: (i) demand immediate payment in full of the Additional costs, (ii) add such Additional Costs to the Reduced Principal Balance, or (iii) add a prorata amount of the Additional Costs to the Payment in an amount necessary either to pay the Additional Costs by a certain date as specified in such written notice or to pay the Loan off by the Maturity Date.

6. **Taxes and Hazard Insurance; Increase in Payments:** Should Loan Servicer require Borrowers, pursuant to the terms of the Loan Documents, to establish an impound account with Loan Servicer for payment of taxes and insurance, or should the monthly contribution to any existing impound account increase pursuant to a periodic escrow analysis, the Payments may increase accordingly. Should the monthly contribution to any existing impound account *decrease* pursuant to a periodic escrow analysis, the Payments will decrease accordingly.

7. **Effect of Agreement; Forbearance:** ***This Agreement shall be of absolutely no force or effect, and no action will be taken by Loan Servicer to forbear from foreclosing on the Property, or to postpone the foreclosure or sale of the Property (if applicable), unless and until Loan Servicer has received both this Agreement, fully executed by Borrowers, and any required Deposit in the form and in the manner as outlined in subparagraph 4b above by no later than 5:00 P.M. Eastern Time, July 8, 2009.*** This Agreement is not considered "received" by Loan Servicer unless and until it has been internally date stamped by Loan Servicer and delivered in hand to The Home Retention Team at 6501 Irvine Center Dr, Irvine CA 92618, ATTN: DD-HPO.

8. **Material Breach and Termination of Agreement:** Borrowers shall be considered to be in material breach of this Agreement and this Agreement shall automatically terminate under any of the following circumstances:

   a. Borrowers fail to strictly comply with any of the terms of this Agreement or the Loan Documents as revised by this Agreement.
   b. The Property is abandoned or left vacant for more than sixty (60) days.
   c. Borrowers transfer any interest in the Property without Loan Servicer's prior written consent.

9. **Effect of Termination:** If this Agreement is terminated due to material breach as set forth above, the Loan Servicer shall be entitled to pursue its remedies pursuant to the terms and conditions of the Security Instrument as if this Agreement had never existed.

10. **No Defenses:** Borrowers agree that, except as set forth in paragraph 2 above, they have no defense, setoff or counterclaim related to the Loan or the Property, or to Loan Servicer's activities relating to the Loan or the Property.

11. **Advice of Attorney:** Borrowers warrant and represent that: (i) in executing this Agreement they have relied upon legal advice from the attorney of their choice, (ii) this Agreement has been read by Borrowers and such attorney, and its consequences (including risks, complications, and costs) have been completely explained to Borrowers by that attorney, and (iii) Borrowers fully understand the terms of this Agreement.

12. **Loan Documents:** All of the terms and conditions of the Security Instrument shall remain in full force and effect except as expressly modified by this Agreement. Nothing contained in this Agreement shall be construed to impair the Security Instrument or affect or impair Loan Servicer's rights or powers under the Security Instrument to recover any sum due under the terms of this Agreement, including any Additional Costs. Borrowers will comply with all covenants, agreements, and requirements of the Security Instrument; however, the following terms and provisions are forever canceled, null and void, as of the Effective Date:

    a. All terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note.
    b. All terms and provisions of any adjustable rate rider, or other instrument or document (if any) that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.

13. **Notice:** Any notice by Loan Servicer to Borrowers under this Agreement shall be deemed given if delivered by regular, certified or overnight mail to the Property address as it appears in this Agreement.

14. **Severability:** To the extent that any word, phrase, clause, or sentence of this Agreement shall be found to be illegal or unenforceable for any reason, such word, phrase, clause, or sentence shall be modified or deleted in such a manner so as to make the Agreement, as so modified, legal and enforceable under applicable law, provided that, should such modification or deletion materially diminish the benefit of this Agreement to either Loan Servicer, in its sole discretion and election, or Borrowers, in their sole discretion and election, the Agreement shall, only after written notice given by the electing party to the other party, be of no force or effect and the relationship of Loan Servicer and Borrowers shall be entirely governed by the provisions of the Loan Documents.

NOTICE TO BORROWERS WITH ADJUSTABLE-RATE LOANS: For Borrowers with an adjustable-rate loan, please read this notice carefully. In accordance with subparagraphs 12(a) and (b) of this Agreement, you (Borrowers) understand that the Loan is modified from an adjustable-rate loan to a fixed-rate loan. An adjustable-rate loan differs from a fixed-rate loan. With a fixed-rate loan, the interest rate stays the same during the life of the loan. With an adjustable-rate loan, the interest rate changes periodically, in relation to an index and a margin, and Payments may go up or down accordingly. **IF INTEREST RATES DECREASE, AN ADJUSTABLE-RATE LOAN COULD BE LESS EXPENSIVE OVER A LONG PERIOD THAN A FIXED-RATE LOAN. YOU UNDERSTAND THAT BY MODIFYING THIS LOAN TO A FIXED-RATE LOAN, YOU ARE FOREGOING THIS POTENTIAL ADVANTAGE.**

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Borrower: [redacted]

Dated: _____

Borrower: [redacted]

Dated: _____

Loan Modification Agreement
Schedule A

Name of Borrower(s): [redacted]

Loan Number: [redacted]

DESCRIPTION OF TOTAL AMOUNT DUE	AMOUNT DUE
Current Principal Balance	$108,594.30
Total Amount Capitalized	$4,755.01
NEW PRINCIPAL BALANCE	$113,349.31

BALLOON LOAN DISCLOSURES (If applicable)	
Amortizing Amount	$113,349.31
Deferment Amount	$0.00
Total Balloon Payment *	$0.00

* The Balloon Payment is subject to change if your loan contains a variable rate feature.

ITEMIZATION OF AMOUNT DUE	Deferred Amount	Total Due
Delinquent Interest From 2/1/2009 To 7/31/2009		$3,990.84
Attorney Fee/Costs	$0.00	$0.00
Delinquent Taxes / Unpaid Insurance	$0.00	$1,911.02
Modification Fee / Document Preparation Fee / Title Property Report (If applicable)	$0.00	$0.00
Property Preservation	$0.00	$0.00
Property Inspection	$0.00	$9.00
Broker Price Opinion (BPO) (Estimated Value of Property)	$0.00	$100.00
Borrower Interview	$0.00	$0.00
Interest on Secured Advances (AH/MSI paid funds on behalf of borrower)	$0.00	$0.00
Late Charges	$0.00	$193.75
Demand Fee	$0.00	$0.00
Fax Fee	$0.00	$0.00
Non-Sufficient Funds (NSF) (Returned Check Fees)	$0.00	$0.00
TOTALS	$0.00	$6,105.01
	Borrower Contribution	$1,350.00
	Mortgage Insurance Contribution	$0.00
	Total Deferred Amount	$0.00
	Amount towards 1st payment due	$0.00
	Total Amount Capitalized	$4,755.01

New Principal and Interest Payment Effective : ** 9/1/2009	$883.69
Monthly Tax Payment ***	$178.84
Monthly Insurance Payment ***	341.17
Monthly Mortgage Insurance Payment	$0.00
Total Payment	$883.80

** If your loan contains an variable rate feature, your monthly principal and interest payment is subject to change based on the terms of the Note and Modification Agreement.
*** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrower Initials here: _____ _____ _____ _____ _____ _____

Non-Obligor Initials here: _____ _____ _____ _____

Loan Modification Agreement
Schedule A

Name of Borrower(s): [redacted]

Loan Number: [redacted]

DESCRIPTION OF TOTAL AMOUNT DUE	AMOUNT DUE
Current Principal Balance	$108,584.30
Total Amount Capitalized	$4,765.01
NEW PRINCIPAL BALANCE	$113,349.31

BALLOON LOAN DISCLOSURES (if applicable)

Amortizing Amount	$113,349.31
Deferment Amount	$0.00
Total Balloon Payment *	$0.00

* The Balloon Payment is subject to change if your loan contains a variable rate feature.

ITEMIZATION OF AMOUNT DUE	Deferred Amount	Total Due
Delinquent Interest - From 2/1/2009 To 7/31/2009		$3,690.04
Attorney Fee/Costs	$0.00	$0.00
Delinquent Taxes / Unpaid Insurance	$0.00	$1,811.02
Modification Fee / Document Preparation Fee / Title Property Report (if applicable)	$0.00	$0.00
Property Preservation	$0.00	$0.00
Property Inspection	$0.00	$9.00
Broker Price Opinion (BPO) (Estimated Value of Property)	$0.00	$100.00
Borrower Interview	$0.00	$0.00
Interest on Secured Advances (Amount paid funds on behalf of borrower)	$0.00	$0.00
Late Charges	$0.00	$193.85
Demand Fee	$0.00	$0.00
Fax Fee	$0.00	$0.00
Non-Sufficient Funds (NSF) (Returned Check Fees)	$0.00	$0.00
TOTALS	$0.00	$5,805.01
	Borrower Contribution	$1,250.00
	Mortgage Insurance Contribution	$0.00
	Total Deferred Amount	$0.00
	Amount towards trial payment due	$0.00
	Total Amount Capitalized	$4,765.01

New Principal and Interest Payment Effective : ** 9/1/2009	$663.69
Monthly Tax Payment **	$178.94
Monthly Insurance Payment ***	$41.17
Monthly Mortgage Insurance Payment	$0.00
Total Payment	$883.80

** If your loan contains an variable rate feature, your monthly principal and interest payment is subject to change based on the terms of the Note and Modification Agreement.
*** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrower Initials here: _____ _____ _____ _____ _____ _____

Non-Obligor Initials here: _____ _____ _____ _____

FILED
2009 NOV -5 A 10:20

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel. RICHARD CORDRAY ATTORNEY GENERAL OF OHIO 615 W. SUPERIOR AVE., 11TH Floor CLEVELAND, OHIO 44113-1899 PLAINTIFF, v. AMERICAN HOME MORTGAGE SERVICING, INC c/o Statutory Agent CT Corporation System 1300 E. 9th St. Cleveland, OH 44114	)	CASE NO Judge: TIMOTHY MCCORMICK CV 09 708888 **COMPLAINT, REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF, CONSUMER DAMAGES, CIVIL PENALTIES AND OTHER APPROPRIATE RELIEF** **JURY DEMAND ENDORSED HEREON**

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, the Ohio Attorney General Richard Cordray, having reasonable cause to believe Defendant American Home Mortgage Services, Inc., ("AHMSI" or "Defendant") has committed violations of Ohio's consumer protection laws, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. § 1345.01 et seq.

2. Plaintiff, State of Ohio, by and through Counsel, Ohio Attorney General Richard Cordray brings this action on behalf of the State of Ohio based upon Defendant AHMSI's violations of the Ohio Consumer Sales Practices Act, O.R.C. § 1345.01, et. seq. (hereinafter "CSPA").

3. Defendant AHMSI, at all relevant times hereto, was a Texas corporation, with its principal place of business located at: 1525 S. Belt Line Rd. Coppell, Texas 75019-4913.

4. Defendant AHMSI, at all relevant times hereto, was licensed as a second mortgage lender, License SM.501517.000, by the Ohio Department of Commerce, Division of Financial Institutions.

5. Defendant AHMSI is a debt-collector as contemplated by the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 et seq.

6. The actions of Defendant, hereinafter described, have occurred in the State of Ohio and Cuyahoga County and other Ohio counties.

7. At all relevant times hereto, Defendant was a "supplier" as that term is defined in R.C. § 1345.01(C) as Defendant engaged in the business of effecting consumer transactions by servicing residential mortgage loans, held by individuals residing in Cuyahoga County and other counties in the State of Ohio, for purposes that are primarily personal, family or household within the meaning specified in R.C. § 1345.01(A) and (D).

8. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. § 1345.04 of the Ohio Consumer Sales Practices Act (CSPA).

9. This Court is the proper venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Cuyahoga County, Ohio.

STATEMENT OF FACTS

10. Defendant AHMSI's mortgage servicing obligations are set forth in various contracts, commonly referred to as a Pooling and Servicing Agreements [PSA], between Defendant and the true owner of the underlying mortgage loan notes, typically a trust or pool containing thousands of securitized residential mortgage loans.

11. Defendant AHMSI services over 12,000 subprime, alt-A, and prime mortgage loans in Ohio, with most of the financed properties owner-occupied with the residential mortgage loans secured by a first mortgage lien.

12. In connection with the servicing of residential mortgage loans Defendant AHMSI accepts, applies, and distributes mortgage loan payments made by Ohio residents.

13. For many of the loans, Defendant AHMSI operates as a debt collector as that term is defined in the Federal Fair Debt Collection Practices Act, 15 U.S.C. 1692a(6).

14. In connection with the servicing of Ohio residential mortgage loans, Defendant AHMSI acquired servicing rights to residential mortgage loans already in default from third parties, including but not limited to Option One Mortgage Corporation.

15. Defendant AHMSI, among other services, offers several different loss mitigation options to borrowers in default, or on the verge of default, including repayment plans, loan modifications, security retention agreements and forbearance agreements.

16. For some borrowers in economic distress Defendant AHMSI has the borrower enter into a Loan Modification Agreement that, inter alia, contains provisions that: require the borrower to waive all legal defenses, rights to set-off, and all counterclaims against the note holder and loan servicer; require the borrower to waive any challenge or right to contest the foreclosure process, including challenges based upon acts

occurring subsequent to the agreement committed by the loan servicer, its attorneys, the foreclosure trustee or any person acting on behalf of the loan servicer; require the borrower to agree that AHMSI can terminate the agreement and recommence foreclosure proceedings without any notice to the borrower if AHMSI believes that the borrower has breached the loan modification agreement; and, reserves exclusively to AHMSI the determination as to when required payments and documents have been received. [Sample Loan Modification Agreement, with consumer information redacted, is attached as complaint Exhibit A].

17. For some borrowers in economic distress Defendant AHMSI has the borrower enter into a Forbearance Agreement that, inter alia, contains provisions that: require the borrower to agree in advance to pay any and all charges imposed by AHMSI, including charges not included in the Forbearance Agreement, and also including charges not yet incurred or billed by AHMSI, for services rendered by or on behalf of AHMSI, including attorney fees; reserves to AHMSI the "sole and absolute discretion" to increase the amounts the borrower is required to pay pursuant to the Forbearance Agreement; permits AHMSI to continue to prosecute any pending foreclosure related motions, including motions that may result in a judgment or sale order against the borrower; and, require the borrower to waive all defenses, rights to set-off and counterclaims for any and all misconduct arising at any time in connection with the origination and servicing of the mortgage loan. [Sample Forbearance Agreement, with borrower information redacted, attached as Complaint Exhibit B].

18. For some borrowers whose security instrument payment obligations on residential mortgage loans have been discharged in bankruptcy, Defendant AHMSI has

permitted them to remain in the property if the borrowers enter into a Security Retention Agreement that, inter alia; require the borrower to agree in advance to pay any and all charges imposed by AHMSI, including charges not included in the Security Retention Agreement, and also including charges not yet incurred or billed by AHMSI, for services rendered by or on behalf of AHMSI, including attorney fees; reserves to AHMSI the "sole and absolute discretion" to increase the amounts the borrower is required to pay pursuant to the Security Retention Agreement; and, require the borrower to waive all defenses, rights to set-off or counterclaims they may have related to the loan or the property. [Sample Security Retention Agreement, with borrower information redacted, attached as Complaint Exhibit C]

19. In connection with the servicing of residential mortgage loans in Ohio, Defendant AHMSI maintains a customer service department that Ohio residents are directed to call with questions or concerns about their mortgage loan. Consumers have complained to the Ohio Attorney General that Defendant's employees or agents are unable to communicate meaningfully with consumers regarding those consumers' accounts, and that Defendant's call center workers do not return calls or respond to repeated inquiries.

20. In connection with the servicing of Ohio residential mortgage loans, Defendant AHMSI has engaged in the following acts and practices: provided incompetent, inadequate and inefficient customer service; lost documents submitted by borrowers requesting loss mitigation assistance; failed to respond, or timely respond, to borrower requests for assistance; failed to offer, or timely offer, affordable loss mitigation options to borrowers.

21. In connection with the servicing of Ohio residential mortgage loans Defendant AHMSI has engaged in the following acts and practices: required borrowers to sign loan modifications, forbearance agreements, and/or security retention agreements that contain illegal and unfair provisions and are unconscionably one-sided in Defendant's favor; purchased forced-place insurance to cover homeowners' dwellings, when such insurance was not necessary or justified and where such insurance was duplicative of valid insurance that existed to cover the homeowners' residences.

FIRST CAUSE OF ACTION

Violations of the Consumer Sales Practices Act

22. Plaintiff, State of Ohio, ex rel. Richard Cordray, Attorney General incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty One (1-21) of this Complaint.

23. Defendant AHMSI has engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02, 1345.03 and 1345.031 by its inadequate, incompetent, and inefficient handling of complaints, inquiries, disputes, and requests for information and assistance in connection with its servicing of Ohio residential mortgage loans, including but not limited to, i.e. the failure to respond to consumers' inquiries or the inability of Defendant's employees or out-sourced agents to communicate meaningfully with Ohioans.

24. Defendant AHMSI has engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02, 1345.03 and 1345.031, in connection with the servicing of loans for residences within the State of Ohio by, inter alia; requiring consumers to agree to

unconscionable mandatory attorney fee clauses, requiring consumers to sign agreements containing unfair and unreasonable releases and waivers of rights.

25. Defendant AHMSI has engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02, 1345.03, 1345.031 in connection with presenting proposed loan modifications to borrowers who are in default or who have contacted Defendant AHMSI due to the borrower having difficulty making their loan payments: by misrepresenting the terms of offered loan modifications; requiring borrowers to sign loan modifications that are unconscionably one-sided in Defendant AHMSI's favor. Such acts and practices are unfair and deceptive and in violation of the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.* and in violation of the Ohio Administrative Code 109: 4-3-28 (Unconscionable Terms in Home Mortgage Loans). Household Realty Corp. v. Dowling, 40 Ohio Misc. 2d 4, 531 N.E.2d 786 (1988).

SECOND CAUSE OF ACTION

Unfair and Deceptive Loan Modification Terms

26. Plaintiff, State of Ohio, ex rel. Richard Cordray, Attorney General incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty One (1- 21) of this Complaint.

27. Defendant AHMSI has engaged in unfair, deceptive and unconscionable acts and practices in violation of Sections 1345.02, 1345.03 and1345.031 and Ohio Administrative Code 109:4-3-28 (C) (8) in connection with Loan Modification Agreements, Security Retention Agreements, and Forbearance Agreements entered into with Ohio consumers that contain terms that violate the Ohio Consumer Sales

Practices Act. Those terms include without limitation: requiring the borrower to waive all legal defenses, rights to set-off and all counterclaims for any and all misconduct arising at any time in connection with the origination and servicing of the mortgage loan against the note holder and loan servicer; requiring the borrower to waive any challenge or right to contest the foreclosure process; requiring the borrower to agree that AHMSI can terminate the agreement and recommence foreclosure without notice; reserving exclusively to AHMSI the determination as to when required payments and documents have been received; requiring the borrower to agree in advance to pay all charges imposed by AHMSI, including charges not included in the Forbearance Agreement or not yet incurred or billed by AHMSI, including attorney fees; reserving to AHMSI the "sole and absolute discretion" to increase the amounts the consumer is required to pay pursuant to the Forbearance Agreement; or permitting AHMSI to continue to prosecute any pending foreclosure related motions that may result in a judgment or sale order against the consumer.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. **ISSUE A PERMANENT INJUNCTION** enjoining Defendant AHMSI, its agents, servants, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with it, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the Consumer Sales Practices Act (CSPA), R.C. 1345.01 et seq.
2. **ISSUE A PERMANENT INJUNCTION** enjoining Defendant AHMSI from enforcing any provision in any agreement it has with borrowers that the Court

determines to violate the law, and further to ORDER Defendant AHMSI to provide written notice of those unenforceable provisions to all borrowers who have entered such Agreements.

3. **ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice described in Plaintiffs' Complaint violates the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq., in the manner set forth in this Complaint.

4. **ORDER** Defendant AHMSI pursuant to the R.C. 1345.07(B) to reimburse all consumers damaged by its unfair, deceptive, and unconscionable acts or practices, including non-economic damages.

5. **ORDER** Defendant AHMSI to comply with all HAMP Participating Servicer requirements, including the requirement that AHMSI perform HAMP analyses upon consumers' mortgage loan notes, and reform those mortgage loans to restrictions and conditions determined by the Court to be fair, reasonable and appropriate.

6. Further **ORDER** Defendant AHMSI to notify all of its subsidiaries, including foreign operation call centers, independent contractors, employees and agents of AHMSI of the terms and conditions of any court ordered relief in this action.

7. **ASSESS, FINE, AND IMPOSE** upon Defendant AHMSI civil penalties of Twenty Five Thousand Dollars ($25,000.00) per violation of 1345.01 et seq. pursuant to R.C. 1345.07(D).

8. **ORDER**, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, that the Defendant AHMSI maintain in its possession and control for a period of five (5) years all business records relating to

Defendant AHMSI's servicing of residential mortgage loans in Ohio, and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all such records.

9. **GRANT** the Ohio Attorney General his costs in bringing this action.

10. **ORDER** Defendant AHMSI to pay all court costs.

11. **GRANT** such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted

RICHARD CORDRAY
Ohio Attorney General

Thomas D. M'Guire
Thomas McGuire, Esq. (0007121)
Senior Assistant Attorney General
Consumer Protection Section
615 Superior Ave, 11th Floor
Cleveland, OH 44113
Phone 216-787-3030
FAX 216-787-3480
Thomas.mcguire@ohioattorneygeneral.gov
Counsel for Plaintiff
State of Ohio

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff State of Ohio ex rel. Cordray demands a trial by jury in this action.

Respectfully submitted,

RICHARD CORDRAY
ATTORNEY GENERAL

THOMAS D. McGUIRE (0007121)
Senior Assistant Attorney General
Consumer Protection Section
State Office Bldg., 11th Fl.
615 W. Superior Ave.
Cleveland, OH 44113-1899
(216) 787-3030

Loan # [redacted]
MIN #

LOAN MODIFICATION AGREEMENT

(Providing for 60 Month Fixed 5% Interest Rate)

This Loan Modification Agreement (this "Agreement"), made as of the 1st day of August 2008, (the "Effective Date") between [redacted] (collectively, "Borrower") and American Home Mortgage Servicing, Inc., as servicer, ("Loan Servicer"), modifies (1) the mortgage, deed of trust, or security deed (the "Security Instrument") dated [redacted] and (2) the promissory note (the "Note"), bearing the same date as, and secured by, the Security Instrument (Borrower's obligation under the Note, Security Instrument and this Agreement hereinafter referred to as the "Loan"), which Security Instrument covers the real and personal property located at [redacted] OH [redacted]

(Property Address)

more fully described in the Security Instrument and defined therein as the "Property." All capitalized terms in this Agreement shall have the same meanings as set forth in the Note and Security Instrument, unless defined in this Agreement; all schedules and exhibits attached to this Agreement are incorporated into and made part of this Agreement; and all references to this Agreement include the schedules and exhibits.

In consideration of the mutual promises and agreements exchanged, Loan Servicer and Borrower agree that the Note and Security Instrument shall be modified hereby as follows:

1. As of the Effective Date, the amount payable under the Note and the Security Instrument (the "New Principal Balance") is U.S. [redacted] consisting of the unpaid amount(s) loaned to Borrower by Lender plus any accrued and unpaid interest and other amounts capitalized as set forth in Schedule "A," attached hereto and made a part hereof.

2. Borrower promises to pay the New Principal Balance, plus interest, to the order of Loan Servicer. Interest will be charged on the New Principal Balance at the yearly rate of 5.000% (the "Mod Rate"), for the sixty (60) month period from the Effective Date, up to and including July 31, 2013 (the "Mod Period"), at which time the interest rate shall revert to the rate as set forth in the Note (the "Note Rate"), as further provided below. If the Note is a fixed rate note, the Note Rate shall be the rate set forth in the Note from the expiration of the Interest Only Period until all sums evidenced by the Note are paid in full. If the Note is an adjustable rate note, the Note Rate shall be the rate that is scheduled to go into effect on the Change Date next following the end of the Interest Only Period, and as thereafter adjusted (all in accordance with the provisions of the Note); however, notwithstanding the foregoing, the Mod Rate shall continue in effect from the expiration of the Interest Only Period until said Change Date (such period, the "Transition Period"). During the Mod Period and the Transition Period, as applicable, Borrower will make monthly payments of principal and interest in the amount of U.S. [redacted] (the "Mod Payment"); provided, that the two Mod Payments due for August 1, 2008, and September 1, 2008, are made in a lump sum upon execution of this Agreement (the "Mod Start Payment"). AS MORE PARTICULARY SET FORTH IN PARAGRAPH 7, THIS AGREEMENT SHALL BE VOID AND NOT TAKE EFFECT UNLESS THE MOD START PAYMENT IN THE FORM OF A CASHIER'S CHECK OR CERTIFIED FUNDS, AND THIS AGREEMENT, ARE RECEIVED ON OR BEFORE SEPTEMBER 19, 2008.

After the Mod Start Payment is made, the next due Mod Payment will be due October, 1, 2008. Beginning on (a) August 1, 2013, with respect to a Note that is a fixed rate note, and (b) the first day of the month following the expiration of the Transition Period, with respect to a Note that is an adjustable rate Note, and in either case continuing thereafter on the same day of each succeeding month until the New Principal Balance and interest are paid in full, the monthly payment will consist of principal and interest at the Note

Borrower Initials here: ____ ____ ____ ____

Rate in an amount necessary to amortize the New Principal Balance, as then in effect, over the remaining term of the Loan. Loan Servicer will notify Borrower of the amount of the new monthly payment prior to the end of the Mod Period or Transition Period, as applicable. If on [redacted] (the "Maturity Date"), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay those amounts in full on the Maturity Date.

3. Borrower will comply with all covenants, agreements, and requirements of Note and Security Instrument, including without limitation, Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that Borrower is obligated to make under the Security Instrument; however, the following terms and provisions are canceled, null and void, during the Mod Period and the Transition Period, as applicable:

(a) all terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note; and

(b) all terms and provisions of any adjustable rate rider, or other instrument or document (if any) that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.

4. Borrower understands, acknowledges and agrees that:

(a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Note and Security Instrument shall also apply to default in the making of the modified payments under this Agreement.

(b) Except as herein modified, all covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect and none of Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Loan Servicer's or Note Holder's rights or remedies under the Note and Security Instrument, whether such rights or remedies arise there under or by operation of law. Also, all rights of recourse to which Loan Servicer and Note Holder are presently entitled against the Property, Borrower, any other property or any other persons in any way obligated for, or liable on, the Note and Security Instrument, are expressly reserved by Loan Servicer and Note Holder.

(c) Borrower has no right of set-off or counterclaim against Note Holder or Loan Servicer, or any defense to the obligations of the Note or Security Instrument.

(d) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.

(e) In addition to and simultaneously with Borrower's monthly payments as set forth in paragraph 2 above, Borrower shall be required pay to Loan Servicer, until such time as the New Principal Balance and interest are paid in full, a sum to provide for payment of amounts due for (i) yearly taxes and assessments which may attain priority over the Security Instrument as a lien on the Property, and (ii) yearly hazard or property insurance premiums, all in accordance with the terms and conditions of the Security Instrument. A waiver of this requirement by Loan Servicer shall not constitute a waiver of such requirement at any future date, and Loan Servicer specifically reserves the right, in its sole and absolute discretion, to impose such requirement at any time upon written notice to Borrower.

(f) Borrower shall make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement.

5. Borrower and Loan Servicer understand, acknowledge and agree that:

(a) If foreclosure proceedings have been commenced with respect to the Loan, upon payment of the Mod Start Payment and Loan Servicer's receipt of this Agreement, fully executed, Loan Servicer shall forbear from taking any further action in connection with any such foreclosure proceeding. In consideration of Lender's forbearance, Borrower hereby expressly waives the right to challenge or contest the foreclosure process initiated by Loan Servicer, Loan Servicer's attorney and/or the foreclosure trustee, including all acts or omissions prior to or subsequent to this Agreement, whether such acts or omissions were performed by Loan Servicer, Loan Servicer's attorney, the foreclosure trustee, and/or any party acting on behalf of the Loan Servicer, Loan Servicer's attorney and/or the foreclosure trustee. Borrower admits and recognizes that any and all postponements of a foreclosure sale, made during the term of this Agreement or in anticipation of this Agreement, are done by mutual consent of Borrower and Loan Servicer and that to the extent allowed by applicable law the foreclosure sale may be postponed from time to time until the loan is fully reinstated or the foreclosure sale is consummated.

(b) Time is of the essence of this Agreement, in particular the receipt by Loan Servicer of this Agreement (fully executed by Borrower and any Non-Obligor Mortgagors) and the Mod Start Payment. There are no grace periods with respect to the Mod Payment due under this Agreement, and failure to make timely payments as specified in paragraph 2 constitutes a breach of the terms of this Agreement. Notwithstanding the above, late charges as specified in the Loan Documents will continue to accrue as allowed by applicable law.

(c) If Borrower fails to make any of the payments specified in paragraph 2 on the due dates and in the amount stated, or otherwise fails to comply with each and all of the terms and conditions herein, Loan Servicer, at its sole option, may terminate this Agreement without further notice to Borrower. In such case, all amounts that are owing under the Note and Security Instrument, as amended by this Agreement, shall become immediately due and payable, and Loan Servicer shall be permitted to exercise any and all rights and remedies provided for in the Loan Documents, including, but not limited to, immediate commencement of a foreclosure action without further notice to Borrower, and/or resumption of a pending foreclosure action without further notice to Borrower, and/or conducting a pending foreclosure sale without further notice to Borrower.

(d) Loan Servicer represents that it has the authority to enter into this Agreement on behalf of the Note Holder.

(e) The terms, clauses, conditions and provisions of this Agreement are binding upon and shall inure to the benefit of all assignees, successors-in-interest, personal representatives, estates, administrators, heirs, devisees, and legatees of each of the parties hereto.

(f) Except as is otherwise provided for herein, this Agreement constitutes the entire agreement between the parties with reference to the subject matter hereof, and supersedes any prior agreement, oral or written, with respect thereto; and, in entering into this Agreement, no party is relying upon any representation, warranty, agreement, or covenants not set forth herein.

(g) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

6. To the extent that any word, phrase, clause, or sentence of this Agreement shall be found to be illegal or unenforceable for any reason, such word, phrase, clause, or sentence shall be modified or deleted in such a manner so as to make the Agreement, as so modified, legal and enforceable under applicable law, provided that should such modification or deletion materially diminish the benefit of this Agreement to any of Loan Servicer, Note Holder or Borrower, the Agreement shall be of no force or effect and the relationship of Loan Servicer, Note Holder and Borrower shall be entirely governed by the provisions of the Note and Security Instrument.

7. This Agreement shall be of no force or effect, and no action will be taken by Loan Servicer to cease collection and foreclosure activities relating to the Loan, unless and until Loan Servicer has received this Agreement, fully executed and initialed by Borrower and any Non-Obligor Mortgagors, along with the Mod Start Payment, in the form of a cashier's check or certified funds, no later than September 19, 2008. This Agreement is not considered "received" by Loan Servicer unless and until it has been delivered to Loan Servicer at 4650 Regent Blvd., Suite 100, Irving, TX 75063, and internally date stamped. Furthermore, this Agreement shall be of no force or effect if Borrower files a bankruptcy petition prior to Loan Servicer's receipt of this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands hereunto as of the date written below.

American Home Mortgage Servicing, Inc.

By: _____

_____
Borrower

_____
Borrower

_____
Borrower

_____
Borrower

NON-OBLIGOR MORTGAGORS

For purposes of this Agreement, the undersigned are not Borrowers; they are "Non-Obligor Mortgagors" (that is, this term is defined to mean (i) signatories on the Security Instrument but not obligated on the Note or (ii) persons not obligated on the Note but added to title on the Property after the origination of the above-referenced Loan). By his/her/their signature(s) below on this Agreement, the undersigned Non-Obligor Mortgagors acknowledge and agree (x) that his/her/their interest in the Property was subject to the Security Instrument and remains subject to the Security Instrument as modified by this Agreement, and (y) that he/she/they are bound by all of the terms and conditions of this Agreement, except to the extent that such terms and conditions pertain to any promise or obligation to pay Loan Servicer or Note Holder any amount.

Acknowledged and agreed to: _____ Date:
Non-Obligor Mortgagor

Acknowledged and agreed to: _____ Date:
Non-Obligor Mortgagor

Loan Modification Agreement
Schedule A

Name of Borrower(s): [redacted]

Loan Number: [redacted]

DESCRIPTION OF TOTAL AMOUNT DUE	TOTAL DUE
Current Principal Balance	$[redacted]
Plus Delinquent Interest Through 06/30/2008:	$[redacted]
Plus Advances Made for Attorneys' Fees/Costs/Inspections	$[redacted]
Plus Escrow (tax and insurance) Shortage (including escrow advances if applicable)	$[redacted]
Plus Unpaid Late Charges	$[redacted]
Plus Non-Sufficient Funds (returned check fees)	$[redacted]
Less Suspense Balance (funds held that will reduce amount owed)	$[redacted]
New Principal Balance	$[redacted]

New Mod Payment Amount Effective From 08/01/2008 Through 07/31/2013*:	
Principal and Interest (P&I) or Interest Only	$[redacted]
Monthly Escrow Payment (for Taxes and Insurance)**	$[redacted]
Total Payment Applicable During Mod or Interest Only Period**	$[redacted]

* If your loan is an ARM, this mod payment amount will be in effect through the payment due on the first Change Date that occurs after 07/31/2013.

** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrowers' Initials _____ _____ _____ _____

AMERICAN HOME MORTGAGE Servicing, Inc.

FORBEARANCE AGREEMENT

Re Loan No. [redacted]
Property Address [redacted] COLUMBUS OH 43229
Borrower(s) [redacted]

This Forbearance Agreement (hereinafter "Agreement"), is made and entered into as of 12/15/2008, by and between American Home Mortgage Servicing, Inc. (hereinafter "Lender") and [redacted] HAMMILL (hereinafter collectively referred to as "Borrowers").

RECITALS:

Borrowers executed that certain promissory note and any riders or addenda thereto (hereinafter the "Note") and mortgage, deed of trust or deed to secure debt (hereinafter "Security Instrument") on or about , in the original principal amount of USD $[redacted] (hereinafter collectively referred to as "Loan" or "Loan Documents"); and

The Loan is secured by the Security Instrument, which covers, the premises commonly known as [redacted] COLUMBUS OH 43229 (hereinafter referred to as "Property"); and

Borrowers have defaulted in making their payments under the Loan and desire to remedy that default by bringing the Loan current; and

Lender has stated that it will consider forgoing pursuit of the legal remedies available to it as a result of Borrowers' aforementioned default under the Loan, provided that the Borrowers execute and fulfill the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the Lender forgoing pursuit of its legal remedies under the Loan Documents relating to foreclosure and sale of the Property due to the aforementioned default, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrowers, intending to be legally bound, understand, acknowledge, covenant and agree as follows:

STATE'S EXHIBIT B

PENGAD 800-631-6989

1. Recitals: The above recitals are true and correct and incorporated herein by reference
2. Contractual Due Date: Borrowers are in default in making their monthly payments under the Loan Documents and the contractual due date of the Loan as of the date of this Agreement is 09/01/2008 (that is, the last installment paid by Borrower's was the one which came due on 08/01/2008)
3. Arrearage: As of the date of this Agreement, the total sum necessary to bring the Loan current, including, but not limited to, principal, accrued interest, accrued late charges, Lender advances, escrow arrearages and foreclosure fees and costs, is $ 5966.18 (hereinafter referred to as the "Arrearage"). The Arrearage is itemized in Exhibit A, attached hereto and made a part hereof. It is anticipated that Payment of the full amount of the Arrearage by Borrowers to Lender pursuant to the terms of this Agreement will fully satisfy the terms of this Agreement and bring the Loan current, at which time regular monthly payments will resume pursuant to the terms of the original Loan Documents. Borrowers understand that the Arrearage set out in Exhibit A is the lump sum necessary to bring the loan current in one payment good through the date thereon, but that paying the Arrearage over time, as contemplated in this Agreement, may increase the overall sum paid. This increase may, for example, be due to monthly charges, such as late charges, which continue to accrue pursuant to the Loan Documents during the pendency of this Agreement because the Loan is delinquent. Other possible reasons for a higher total when paying over time are an increase in the monthly amount due because of interest rate changes (on adjustable rate mortgages), and interest on secured advances. Should Borrowers bring the loan current more quickly than contemplated under the Agreement, the overall cost may be lower due to the accrual of fewer charges such as late charges and interest on secured advances.
4. Increased Monthly Payment: Borrowers must make all Loan payments pursuant to the following terms and conditions:
   a. As a prerequisite to the validity of this Agreement, a down payment in the amount of $ 1975.00, must be received by Lender no later than 5:00 P.M. Pacific Standard Time, 12/16/2008 either: (i) via overnight mail sent to the attention of American Home Mortgage Servicing, Inc., 4600 Regent Blvd., Suite 200, Irving, TX 75038-1730 in the form of guaranteed funds (certified check, cashiers check or money order) made payable to American Home Mortgage Servicing, Inc. or (ii) via Money Gram, receive code 4513 or Western Union "Quick Collect" to Code City: OPTION, Code State: CA.
   b. During the term of this Agreement, Borrowers shall make increased monthly payments in the amount of $ 2314.58, which includes the full regular monthly payment under the Loan Documents plus a pro rata portion of the Arrearage (both amounts together hereinafter referred to as the 'Plan Payment'), which must be received by Lender no later than 5:00 P.M. Pacific Standard Time, commencing on 12/17/2008 and continuing on the same date of each and every month through and including 02/17/2009. The Plan Payment is itemized in Exhibit B, attached hereto and made a part hereof. Borrowers must send the Plan Payment either (i) in the form of guaranteed funds (certified check, cashiers check or money order) made payable to American Home Mortgage Servicing, Inc., and mailed or delivered to Lender at American Home Mortgage Servicing, Inc., 4600 Regent Blvd., Suite 200, Irving, TX 75038-1730 or (ii) via Money Gram, receive code 4513 or Western Union Quick Collect to Code City: OPTION, Code State: CA.
   c. All payments on the Loan made pursuant to this Agreement shall be clearly marked with the above-referenced Loan number and may be applied to any amounts outstanding on the Loan, including fees and costs, in the order and proportion deemed appropriate by Lender.
   d. As to each and every payment made under this Agreement, time shall be strictly of the essence and there shall be no grace period.

5. Collection Efforts to Continue: This Agreement shall be of absolutely no force or effect, and no action will be taken by Lender to cease collection activities and/or postpone the foreclosure or sale of the Property (if applicable), unless and until Lender has received both this Agreement, fully executed by the Borrowers, and any required down payment in the form and in the manner as outlined in subparagraph 4a above no later than 12/16/2008 This Agreement is not considered "received" by Lender unless and until it has been internally date stamped by Lender and delivered to American Home Mortgage Servicing, Inc. 4600 Regent Blvd., Suite 200, Irving, TX 75063-1730, or successfully faxed to 866-435-8113 Faxed copy of the Agreement may be used for any purposes as if it were the original.

6. Late Charges and Additional Fees and Costs; Increase in Plan Payment:

   a. Unless prohibited by state law, late charges, as set forth in the Note, shall continue to accrue during the term of this Agreement until such time as the Loan is brought current. Borrowers understand that any such late charges may be in addition to (and not subsumed within) the Plan Payments, but must also be paid to satisfy the terms and conditions of this Agreement and bring the Loan current. This is because a late charge for an installment may not be accrued unless that installment remains outstanding past the late charge accrual date.

   b. Additional fees, expenses and charges relating to the Loan that have not yet been billed to or incurred by Lender or debited to the Loan account, including but not limited to appraisal and broker price opinion fees, property inspection fees, Lender advances for payment of Borrowers' taxes and/or insurance, attorney fees and expenses, and collection fees (hereinafter, together with late charges, collectively referred to as "Additional Costs"), are not included in the Plan Payment and must be paid by Borrowers in order to fully satisfy the terms and conditions of this Agreement and bring the Loan current.

   c. In order to ensure payment by Borrowers of such Additional Costs, and in Lender's sole and absolute discretion, the Plan Payment amount may be subject to increase, upon written notice by Lender to Borrowers, to an amount necessary to bring the Loan current by the final Plan Payment due date under this Agreement.

7. Adjustable Rate Note; Increase in Plan Payment: If the Note is an adjustable rate instrument, the Plan Payment may be subject to increase pursuant to interest rate adjustments as dictated by the terms of the Note. If the Plan Payment is not increased despite an interest rate increase pursuant to the Note, the sums accrued but unpaid due to the interest rate increase ("Additional Sums Due Per Rate Change") must also be paid to satisfy the terms and conditions of this Agreement and bring the Loan current. If the interest rate is adjusted downward under the terms of the Note, the Plan Payment will not decrease, but any surplus will be applied to the Arrearage. In order to ensure payment by Borrowers of such Additional Sums Due Per Rate Change, and in Lender's sole and absolute discretion, the Plan Payment amount may be subject to increase, upon written notice by Lender to Borrowers, to an amount necessary to bring the Loan current by the final Plan Payment due date under this Agreement.

8. Taxes and Hazard Insurance; Increase in Plan Payment: Should Lender require Borrowers, pursuant to the terms of the Loan Documents, to establish an impound account with Lender for payment of taxes and insurance, or should the monthly contribution to any existing impound account increase pursuant to a periodic escrow analysis, the Plan Payment may increase accordingly. Should the monthly contribution to any existing impound account decrease pursuant to a periodic escrow analysis, the Plan Payment will not decrease, but any surplus will be applied to the Arrearage. In order to ensure payment by Borrowers of any additional sums due pursuant to an increase in the monthly escrow contribution, and in Lender's sole and absolute discretion, the Plan Payment amount may be subject to increase, upon written notice by Lender to Borrowers, to an amount necessary to bring the Loan current by the final Plan Payment due date under this Agreement.

9. Credit Reporting: Until such time as the Loan is brought current (either by successful completion of the terms of this Agreement or a lump sum payment of the Arrearage), the Loan remains delinquent and the Lender must continue to report the Loan as delinquent to the credit reporting agencies to which Lender reports.

10. Pending Foreclosure Action: In the event that a foreclosure action is pending relating to the Loan at the time this Agreement becomes effective (as contemplated in paragraph 5 above), the foreclosure action will not be dismissed, but Lender shall use its best efforts to ensure that the foreclosure is placed on hold pending satisfaction by Borrowers of the terms of this Agreement. Lender shall retain the right to continually postpone the foreclosure, file notices with the court, publish the pending foreclosure, complete service or otherwise take any action reasonably necessary to maintain the "Pending" status of the foreclosure action during the term of this Agreement. Furthermore, if Lender or its designated agent has, prior to the execution of this Agreement, submitted any motion or order to the court, Lender shall not be required to withdraw such motion or order by virtue of this Agreement, and the court shall be permitted to consider such motion and/or enter any appropriate order in response to such motion. In the event a judgment of foreclosure is entered or a foreclosure sale or "law day" is held after this Agreement is offered to Borrowers, but before it is effective by virtue of their timely performance, it shall be automatically withdrawn.

11. Inability to Postpone: If a foreclosure sale or "law day" has been scheduled to occur shortly after Lender has received both the signed Agreement and any required down payment from the Borrowers, it may not be possible for Lender to stop the sale of the Property or vesting of title to the Property in a third party purchaser. In such event, the down payment will be returned to the Borrowers and this Agreement shall have no force or effect. Furthermore, Lender assumes no liability, and Borrowers hereby absolve Lender from liability, for failure to stop the sale or otherwise unwind, rescind or reverse the sale or vesting should such sale or vesting occur. If Lender is unable to stop the sale of the Property and Borrowers and Lender subsequently undertake any effort to unwind, rescind or reverse the sale or vesting, then any fees and costs associated with such activity shall be added to the Loan balance.

12. Material Breach and Termination of Agreement: The Borrowers shall be considered to be in material breach of this Agreement and this Agreement shall terminate at the option of Lender without further notice to Borrowers at under any of the following circumstances:

    a. Borrowers fail to strictly comply with any of the terms of this Agreement or the Loan Documents (for example, by failing to timely pay any of the payments called for in this Agreement).

    b. The Property is abandoned or left vacant for more than sixty (60) days.

    c. Borrowers transfer any interest in the Property without Lender's prior written consent.

    d. The facts or circumstances relating to Borrowers' financial condition, which influenced Lender to enter into this Agreement, are substantially changed for the worse.

    e. Incorrect or fraudulent information was submitted by Borrowers to induce Lender to enter into this Agreement.

13. Effect of Termination: If this Agreement is terminated due to material breach as set forth above, the Lender shall be entitled to pursue its remedies pursuant to the terms and conditions of the Loan Documents as if this Agreement had never existed. If, upon termination of this Agreement, the Borrowers remain in default under the Loan Documents, Lender shall be entitled to commence or resume foreclosure without the necessity of re-providing the Borrowers with any legally required notices that were duly provided by Lender to Borrowers prior to execution or during the term of this Agreement. Lender's waiver of a breach by Borrower shall not be construed as a waiver of any subsequent breach or failure of the same term or condition or a waiver of any other term or condition in this Agreement, nor shall it establish or evidence any course of dealing between the parties.

Loan Number# [redacted] ID# [redacted]

14. No Defenses; Release: By their execution and delivery to Lender of this Agreement, the Borrowers acknowledge that the Arrearage is the Borrowers' full responsibility and was produced solely by the actions or inactions of the Borrowers. Furthermore, Borrowers agree that they have no defense, setoff or counterclaim related to the Loan or the Property, or to Lender's activities relating to the Loan or the Property, and Borrowers hereby voluntarily release, discharge and agree not to sue Lender for any and all claims, demands, controversies, damages, actions, causes of action, liabilities, rights, costs (including attorney fees and court and litigation costs and expenses), indemnities; obligations or losses of any kind or nature whatsoever, whether at this time known or unknown, for or by reason of any act, omission, event, transaction, matter or cause, arising from or relating to the Loan, the origination of the Loan or the servicing of the Loan, or any dispute arising from or relating to the Loan, the origination of the Loan or the servicing of the Loan, or any of the facts upon which any such dispute is based.

15. Advice of Attorney: The Borrowers warrant and represent that in executing this Settlement Agreement they have relied upon legal advice from the attorney of their choice; that this Agreement has been read by the Borrowers and such attorney, and its consequences (including risks, complications, and costs) have been completely explained to Borrowers by that attorney; and Borrowers fully understand the terms of this Agreement.

16. Loan Documents: All of Borrowers' rights and responsibilities under, and all of the terms and conditions of the Note and Security Instrument, shall remain in full force and effect except as expressly modified by this Agreement. Nothing contained in this Agreement shall be construed to impair the Security Instrument or affect or impair Lender's rights or powers under the Loan Documents to recover any sum due under the terms of the Note, including any Arrearage and Additional Costs.

17. Severability: To the extent that any word, phrase, clause, or sentence of this Agreement shall be found to be illegal or unenforceable for any reason, such word, phrase, clause, or sentence shall be modified or deleted in such a manner so as to make the Agreement, as so modified, legal and enforceable under applicable law, provided that should such modification or deletion materially diminish the benefit of this Agreement to either Lender, in its sole discretion and election, or Borrowers, in their sole discretion and election, the Agreement shall, only after written notice given by the electing party to the other party, be of no force or effect and the relationship of Lender and Borrowers shall be entirely governed by the provisions of the Loan Documents.

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Borrower: [redacted]

Dated: 12/17/08

Borrower: _____

Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

Loan Number# [redacted] ID# : [redacted]

EXHIBIT A

Borrower Name : [redacted]
Reinstatement Quote for Loan # [redacted]
Good Through Date : 12/23/2008

2 Payments Due @ 936.24	:	$ 1872.48
2 Payments Due @ 935.13	:	$ 1870.26
Foreclosure Fees and Costs	:	$ 1971.00
Other Fees	:	$ 94.60
Late Charges	:	$ 157.84
Total Servicer Reinstatement Amount	:	$ 5966.18

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Borrower: [redacted]

Dated: 12/17/08

Borrower: _____

Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

Loan Number# [redacted] ID# [redacted]

EXHIBIT B

PLAN PAYMENT DETAILS for Loan : [redacted]

	Due Date	Payment Amount
Deposit	12/16/2008	$ 1975.00
1	12/17/2008	$ 2314.58
2	01/17/2009	$ 2314.58
3	02/17/2009	$ 2314.58
Total		$ 6943.74

		Term	
RI Amount:			$ 5966.18
Payment	$ 935.13	3	$ 2805.39
Late Charge	$ 39.46	3	$ 118.38
Prop Insp	$ 9.60	3	$ 28.80
Total			$ 8918.75
Less Deposit :			$ 1975.00
Total Plan Installments:			$ 6943.75

Borrower: [redacted]

Dated: 12/17/08

Borrower: _____

Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

46
2483.60

NOTICE TO BORROWERS :

Please be advised that the total listed on this Exhibit B is necessarily based on several assumptions. First, it presumes that each installment listed hereon will be made timely, according to the above schedule. Should reinstatement be made early, certain of the anticipated but not yet accrued charges (such as, for example, the late charges and property inspection fees listed in the right hand column that has not yet come due at the time or reinstatement), will not be included in the amount necessary to reinstate. Thus, should you desire to reinstate early, please call (877)-304-3100 to get an up-to-date reinstatement figure.

Second, any increase in the total amount due pursuant to a change caused by additional fees and costs (see Paragraph 6 of the Agreement), an interest rate increase (see Paragraph 7 of the Agreement), or an increase in the escrow (tax or insurance) component of your payment (see Paragraph 8 of the Agreement) must be paid before the Loan is considered fully reinstated pursuant to the Agreement. As such, the final Plan Payment - or an early reinstatement - may differ significantly from the amount set forth in this Exhibit B.

The component sums (i.e. Arrearage, Payment, Late charge, etc.), which together comprise the "Total" on this Exhibit B, rather than being equally distributed in the plan payments are applied as permitted by Paragraph 4c of the Agreement in an order designated by Lender, such as, for example, payment of accrued fees and costs prior to application to other sums due.

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Loan Number# [redacted] ID# [redacted]

Borrowers acknowledge that they have read and understand that above notice.

Borrower: [redacted] Borrower: _____

Dated: 12/17/08 Dated: _____

BORROWERS MUST SIGN AND RETURN ALL PAGES

American Home Mortgage Servicing Inc., 4600 Regent Blvd., Suite 200,
Irving, TX 75063-1730 * (877) 304-3100* Fax 888-436-8113

12/17/2008 3:39PM (GMT-05:00)

AMERICAN HOME MORTGAGE SERVICING, INC.

SECURITY RETENTION AGREEMENT

(Providing for a Fixed Interest Rate)

Re: Loan Number: [redacted]
Property Address: [redacted]
Borrower(s): [redacted]

This Security Retention Agreement (hereinafter "**Agreement**"), is made and entered into as of August 1, 2009 (the "**Effective Date**") by and between American Home Mortgage Servicing, Inc. (hereinafter "**Loan Servicer**") and [redacted] (hereinafter collectively referred to as "**Borrowers**").

RECITALS:

Borrowers executed that certain promissory note (hereinafter "**Note**") and mortgage, deed of trust or deed to secure debt (hereinafter "**Security Instrument**") on or about October 28, 2005, in the original principal amount of U.S $104,000.00, (hereinafter collectively referred to as "**Loan**" or "**Loan Documents**"); and

Borrowers secured the Loan by virtue of the Security Instrument, covering the premises commonly known as [redacted] (hereinafter referred to as "**Property**"); and

Borrowers debts have been discharged pursuant to a Chapter 7 bankruptcy, but Loan Servicer retained and reserved its right under the Security Instrument to foreclose on the Property; and

Borrowers have informed Loan Servicer that it wishes to remain in the Property and continue to make payments on the Loan; and

Loan Servicer has stated that it will forego pursuit of the legal remedies available to it, provided that Borrowers execute and fulfill the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the Loan Servicer forgoing pursuit of its legal remedies under the Security Instrument relating to foreclosure and sale of the Property, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrowers understand, acknowledge, covenant and agree as follows:

STATE'S EXHIBIT C

PENGAD 800-631-6989

1. **Recitals:** The above recitals are true and correct and incorporated herein by reference.

2. **No Personal Liability:** ***Since Borrowers' debts have previously been discharged pursuant to a Chapter 7 bankruptcy and since Borrowers did not sign an agreement reaffirming the Loan, this Agreement is not to be construed as an attempt to collect a debt from Borrowers personally. Borrowers understand and Loan Servicer acknowledges that Loan Servicer has no right and no intention to enforce the Loan against Borrowers and that Loan Servicer's only recourse, if the Loan is not current as set forth in the Loan Documents and this Agreement, is to foreclose on the Property.***

3. **Forbearance by Loan Servicer:** Even though Borrowers are no longer personally liable to repay the Loan, Loan Servicer reserves its right under the Security Instrument to foreclose on the Property, which Borrowers acknowledge and agree they pledged as security for the Loan. Borrowers hereby request that Loan Servicer forbear from pursuing foreclosure and enter into this Agreement, which specifies the steps they must take in order to allow them to retain the Property. In consideration of Borrowers' agreement to abide, and only for so long as they continue to abide, by all of the terms and conditions of this Agreement, Loan Servicer hereby agrees to forbear from foreclosing on the Property.

4. **Payments:** In consideration of Loan Servicer forbearing from foreclosing and allowing Borrowers to remain in the Property, Borrowers must make monthly Property retention payments ("**Payment**" or "**Payments**") in the amounts and by the dates, and in accordance with the terms and conditions, as set forth in this Agreement.

    a. As of the Effective Date, the amount payable under the Note and the Security Instrument is U.S. $114,699.31 (the "**New Principal Balance**"), consisting of the unpaid amount(s) loaned to Borrowers by Lender plus any accrued and unpaid interest and other amounts capitalized as set forth in Schedule "A," attached hereto and made a part hereof.
    b. Borrowers shall pay an earnest money payment (the "**Deposit**") in the amount of U.S. $1,350.00, which Deposit must be received by Loan Servicer no later than 5:00 P.M. Eastern Time, (N/A), either: (i) via overnight mail sent to the attention of American Home Mortgage Servicing, Inc., 6501 Irvine Center Dr, Irvine CA 92618, ATTN: DD-HPO, in the form of guaranteed funds (certified check, cashiers check or money order) made payable to American Home Mortgage Servicing, Inc., or (ii) via Western Union "quick collect" to Code City: Option, Code State: CA.
    c. The Deposit shall be deducted from the New Principal Balance, for a total outstanding balance on the Loan of U.S. $113,349.31 (the "**Reduced Principal Balance**").

d. Interest shall be charged on the Reduced Principal Balance at the yearly rate of 5.25%, from the Effective Date until November 1, 2035 (the "**Maturity Date**").

e. Borrowers shall make Payments of principal and interest (plus any amounts due for taxes and insurance as set forth in Schedule "A") in the amount of U.S. $663.69. All Payments must be received by Loan Servicer, clearly marked with the above-referenced Loan number, no later than 5:00 P.M. Eastern Time, beginning on September 1, 2009, and continuing on the same date of each and every succeeding month until the Reduced Principal Balance and interest are paid in full. If the Loan is an adjustable-rate mortgage ("ARM") loan and Borrower receives an ARM adjustment notice prior to the Payment beginning date indicated in the preceding sentence, Borrowers should ignore such notice and make Payments in accordance with this Agreement. If on the Maturity Date, Borrowers still owe amounts under the Loan, as amended by this Agreement, Borrowers will pay these amounts in full on the Maturity Date.

f. Payments are subject to increase at any time pursuant to paragraphs 5 and 6 below.

g. As to each and every Payment made under this Agreement, ***time shall be strictly of the essence and there shall be no grace period.***

5. Additional Fees and Costs; Increase in Payment:

a. Additional fees, expenses and charges relating to the Loan that have not been billed to or incurred by Loan Servicer or debited to the Loan account as of the Effective Date (including but not limited to late fees, appraisal and broker price opinion fees, property inspection fees, Loan Servicer advances for payment of Borrowers' taxes and/or insurance, attorney fees and expenses, collection fees and any other expenses incurred by Loan Servicer to protect its security interest in the Property), or clerical errors later discovered in the calculation of the Payments, (all of which fees, expenses, charges and errors, together with late charges, are collectively referred to as "**Additional Costs**"), are not included in the Payment amount and must be paid by Borrowers in order to fully satisfy the terms and conditions of this Agreement.

b. In order to ensure payment by Borrowers of such Additional Costs, Loan Servicer may, upon written notice by Loan Servicer to Borrowers and in Loan Servicer's sole and absolute discretion, either: (i) demand immediate payment in full of the Additional costs, (ii) add such Additional Costs to the Reduced Principal Balance, or (iii) add a prorata amount of the Additional Costs to the Payment in an amount necessary either to pay the Additional Costs by a certain date as specified in such written notice or to pay the Loan off by the Maturity Date.

6. **Taxes and Hazard Insurance; Increase in Payments:** Should Loan Servicer require Borrowers, pursuant to the terms of the Loan Documents, to establish an impound account with Loan Servicer for payment of taxes and insurance, or should the monthly contribution to any existing impound account increase pursuant to a periodic escrow analysis, the Payments may increase accordingly. Should the monthly contribution to any existing impound account *decrease* pursuant to a periodic escrow analysis, the Payments will decrease accordingly.

7. **Effect of Agreement; Forbearance:** ***This Agreement shall be of absolutely no force or effect, and no action will be taken by Loan Servicer to forbear from foreclosing on the Property, or to postpone the foreclosure or sale of the Property (if applicable), unless and until Loan Servicer has received both this Agreement, fully executed by Borrowers, and any required Deposit in the form and in the manner as outlined in subparagraph 4b above by no later than 5:00 P.M. Eastern Time, July 8, 2009.*** This Agreement is not considered "received" by Loan Servicer unless and until it has been internally date stamped by Loan Servicer and delivered in hand to The Home Retention Team at 6501 Irvine Center Dr, Irvine CA 92618, ATTN: DD-HPO.

8. **Material Breach and Termination of Agreement:** Borrowers shall be considered to be in material breach of this Agreement and this Agreement shall automatically terminate under any of the following circumstances:

   a. Borrowers fail to strictly comply with any of the terms of this Agreement or the Loan Documents as revised by this Agreement.
   b. The Property is abandoned or left vacant for more than sixty (60) days.
   c. Borrowers transfer any interest in the Property without Loan Servicer's prior written consent.

9. **Effect of Termination:** If this Agreement is terminated due to material breach as set forth above, the Loan Servicer shall be entitled to pursue its remedies pursuant to the terms and conditions of the Security Instrument as if this Agreement had never existed.

10. **No Defenses:** Borrowers agree that, except as set forth in paragraph 2 above, they have no defense, setoff or counterclaim related to the Loan or the Property, or to Loan Servicer's activities relating to the Loan or the Property.

11. **Advice of Attorney:** Borrowers warrant and represent that: (i) in executing this Agreement they have relied upon legal advice from the attorney of their choice, (ii) this Agreement has been read by Borrowers and such attorney, and its consequences (including risks, complications, and costs) have been completely explained to Borrowers by that attorney, and (iii) Borrowers fully understand the terms of this Agreement.

12. **Loan Documents:** All of the terms and conditions of the Security Instrument shall remain in full force and effect except as expressly modified by this Agreement. Nothing contained in this Agreement shall be construed to impair the Security Instrument or affect or impair Loan Servicer's rights or powers under the Security Instrument to recover any sum due under the terms of this Agreement, including any Additional Costs. Borrowers will comply with all covenants, agreements, and requirements of the Security Instrument; however, the following terms and provisions are forever canceled, null and void, as of the Effective Date:

    a. All terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note.
    b. All terms and provisions of any adjustable rate rider, or other instrument or document (if any) that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.

13. **Notice:** Any notice by Loan Servicer to Borrowers under this Agreement shall be deemed given if delivered by regular, certified or overnight mail to the Property address as it appears in this Agreement.

14. **Severability:** To the extent that any word, phrase, clause, or sentence of this Agreement shall be found to be illegal or unenforceable for any reason, such word, phrase, clause, or sentence shall be modified or deleted in such a manner so as to make the Agreement, as so modified, legal and enforceable under applicable law, provided that, should such modification or deletion materially diminish the benefit of this Agreement to either Loan Servicer, in its sole discretion and election, or Borrowers, in their sole discretion and election, the Agreement shall, only after written notice given by the electing party to the other party, be of no force or effect and the relationship of Loan Servicer and Borrowers shall be entirely governed by the provisions of the Loan Documents.

NOTICE TO BORROWERS WITH ADJUSTABLE-RATE LOANS: For Borrowers with an adjustable-rate loan, please read this notice carefully. In accordance with subparagraphs 12(a) and (b) of this Agreement, you (Borrowers) understand that the Loan is modified from an adjustable-rate loan to a fixed-rate loan. An adjustable-rate loan differs from a fixed-rate loan. With a fixed-rate loan, the interest rate stays the same during the life of the loan. With an adjustable-rate loan, the interest rate changes periodically, in relation to an index and a margin, and Payments may go up or down accordingly. **IF INTEREST RATES DECREASE, AN ADJUSTABLE-RATE LOAN COULD BE LESS EXPENSIVE OVER A LONG PERIOD THAN A FIXED-RATE LOAN. YOU UNDERSTAND THAT BY MODIFYING THIS LOAN TO A FIXED-RATE LOAN, YOU ARE FOREGOING THIS POTENTIAL ADVANTAGE.**

IN WITNESS WHEREOF, the undersigned has/have caused this Agreement to be executed as of the date first above written.

Borrower: [redacted]

Dated: _____

Borrower: [redacted]

Dated: _____

Loan Modification Agreement
Schedule A

Name of Borrower(s): [redacted]

Loan Number: [redacted]

DESCRIPTION OF TOTAL AMOUNT DUE	AMOUNT DUE
Current Principal Balance	$108,594.30
Total Amount Capitalized	$4,755.01
NEW PRINCIPAL BALANCE	$113,349.31

BALLOON LOAN DISCLOSURES (If applicable)	
Amortizing Amount	$113,349.31
Deferment Amount	$0.00
Total Balloon Payment *	$0.00

* The Balloon Payment is subject to change if your loan contains a variable rate feature.

ITEMIZATION OF AMOUNT DUE	Deferred Amount	Total Due
Delinquent Interest From 2/1/2009 To 7/31/2009		$3,990.64
Attorney Fee/Costs	$0.00	$0.00
Delinquent Taxes / Unpaid Insurance	$0.00	$1,611.62
Modification Fee / Document Preparation Fee / Title Property Report (If applicable)	$0.00	$0.00
Property Preservation	$0.00	$0.00
Property Inspection	$0.00	$9.00
Broker Price Opinion (BPO) (Estimated Value of Property)	$0.00	$100.00
Borrower Interview	$0.00	$0.00
Interest on Secured Advances (Amount paid funds on behalf of borrower)	$0.00	$0.00
Late Charges	$0.00	$193.75
Demand Fee	$0.00	$0.00
Fax Fee	$0.00	$0.00
Non-Sufficient Funds (NSF) (Returned Check Fees)	$0.00	$0.00
TOTALS	$0.00	$5,905.01
	Borrower Contribution	$1,350.00
	Mortgage Insurance Contribution	$0.00
	Total Deferred Amount	$0.00
	Amount towards last payment due	$0.00
	Total Amount Capitalized	$4,755.01

New Principal and Interest Payment Effective : ** 9/1/2009	$883.69
Monthly Tax Payment ***	$178.84
Monthly Insurance Payment ***	341.17
Monthly Mortgage Insurance Payment	$0.00
Total Payment	$883.80

** If your loan contains an variable rate feature, your monthly principal and interest payment is subject to change based on the terms of the Note and Modification Agreement.
*** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrower Initials here: _____ _____ _____ _____ _____ _____

Non-Obligor Initials here: _____ _____ _____ _____

Loan Modification Agreement
Schedule A

Name of Borrower(s): [redacted]

Loan Number: [redacted]

DESCRIPTION OF TOTAL AMOUNT DUE	AMOUNT DUE
Current Principal Balance	$108,584.30
Total Amount Capitalized	$4,765.01
NEW PRINCIPAL BALANCE	$113,349.31

BALLOON LOAN DISCLOSURES (if applicable)

Amortizing Amount	$113,349.31
Deferment Amount	$0.00
Total Balloon Payment *	$0.00

* The Balloon Payment is subject to change if your loan contains a variable rate feature.

ITEMIZATION OF AMOUNT DUE	Deferred Amount	Total Due
Delinquent Interest - From 2/1/2009 To 7/31/2009		$3,690.04
Attorney Fee/Costs	$0.00	$0.00
Delinquent Taxes / Unpaid Insurance	$0.00	$1,811.02
Modification Fee / Document Preparation Fee / Title Property Report (if applicable)	$0.00	$0.00
Property Preservation	$0.00	$0.00
Property Inspection	$0.00	$9.00
Broker Price Opinion (BPO) (Estimated Value of Property)	$0.00	$100.00
Borrower Interview	$0.00	$0.00
Interest on Secured Advances (Amount paid funds on behalf of borrower)	$0.00	$0.00
Late Charges	$0.00	$193.85
Demand Fee	$0.00	$0.00
Fax Fee	$0.00	$0.00
Non-Sufficient Funds (NSF) (Returned Check Fees)	$0.00	$0.00
TOTALS	$0.00	$5,805.01
	Borrower Contribution	$1,250.00
	Mortgage Insurance Contribution	$0.00
	Total Deferred Amount	$0.00
	Amount towards trial payment due	$0.00
	Total Amount Capitalized	$4,765.01

New Principal and Interest Payment Effective : ** 9/1/2009	$663.69
Monthly Tax Payment ***	$178.94
Monthly Insurance Payment ***	$41.17
Monthly Mortgage Insurance Payment	$0.00
Total Payment	$883.80

** If your loan contains an variable rate feature, your monthly principal and interest payment is subject to change based on the terms of the Note and Modification Agreement.
*** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrower Initials here: _____ _____ _____ _____ _____ _____

Non-Obligor Initials here: _____ _____ _____ _____

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel. RICHARD CORDRAY ATTORNEY GENERAL OF OHIO 30 E. BROAD STREET, 14th FLOOR COLUMBUS, OHIO 43215 OHIO DEPARTMENT OF COMMERCE, ex rel. KIMBERLY A. ZURZ, DIRECTOR 77 S. HIGH STREET, 23rd FLOOR COLUMBUS, OHIO 43266 PLAINTIFFS, v. CARRINGTON MORTGAGE SERVICES, LLC C/O CT CORPORATION SYSTEM STATUTORY AGENT 1300 E. 9TH STREET CLEVELAND, OHIO 44114 DEFENDANT.	)	CASE NO. 09CVH 7 11433 JUDGE FAIS **COMPLAINT, REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF, CONSUMER DAMAGES, CIVIL PENALTIES, PUNITIVE DAMAGES, AND OTHER APPROPRIATE RELIEF**

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2009 JUL 31 AM 9:12
CLERK OF COURTS-C2

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, Ohio Attorney General Richard Cordray, having reasonable cause to believe Defendant Carrington Mortgage Services, LLC ("Carrington" or "Defendant") has committed violations of Ohio's consumer protection laws, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. § 1345.01 et seq.

2. Plaintiffs State of Ohio, by and through Counsel, Ohio Attorney General Richard Cordray and Ohio Department of Commerce ex rel. Kimberly A. Zurz ("Plaintiffs"

or "State"), also bring this action based upon Defendant Carrington's breach of a contract entered into between the State and Carrington on January 29, 2008.

3. Defendant Carrington, is, and at all relevant times hereto has been, a Delaware corporation with its principal place of business located at 1610 East St. Andrew Place, Suite B, Santa Ana, California 92705-4932.

4. Defendant Carrington, is, and at all relevant times hereto, has been licensed as a second mortgage lender, (License # SM.501517), by the Ohio Department of Commerce, Division of Financial Institutions.

5. The actions of Defendant, hereinafter described, have occurred in the State of Ohio and Franklin County and various other Ohio counties.

6. At all relevant times hereto, Defendant was a "supplier" as that term is defined in R.C. § 1345.01(C) as Defendant engaged in the business of effecting consumer transactions by servicing residential mortgage loans, held by individuals residing in Franklin County and other counties in the State of Ohio, for purposes that are primarily personal, family or household within the meaning specified in R.C. §§ 1345.01(A) and (D).

7. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. § 1345.04 of the Ohio Consumer Sales Practices Act ("CSPA").

8. This Court is the proper venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Franklin County, Ohio.

STATEMENT OF FACTS

9. Defendant Carrington's mortgage servicing obligations are set forth in various contracts, commonly referred to as Pooling and Servicing Agreements ("PSA"), between Defendant and the true owner of the underlying mortgage loan notes, typically a trust or pool containing thousands of securitized residential mortgage loans.

10. In connection with the servicing of residential mortgage loans in Ohio, Defendant Carrington accepts, applies, and distributes mortgage loan payments and other fees, penalties and assessments paid by Ohio residents.

11. In connection with the servicing of residential mortgage loans in Ohio, Defendant Carrington maintains a customer service department that Ohio residents are directed to call with questions or concerns about their mortgage loan, including borrowers who are in default and in need of loss mitigation assistance such as loan modifications.

12. As mortgage servicer, Defendant Carrington receives, in the normal course of business, consumers' disputes regarding the status and handling of their loans. In many instances, Defendant Carrington has failed to investigate and resolve consumers' disputes in a timely manner.

13. On January 29, 2008 the Ohio Attorney General and the Ohio Department of Commerce, acting in their official capacities on behalf of the State of Ohio, entered into an Agreement For A Stay of Mortgage Loan Foreclosures ("Agreement") with Defendant Carrington to resolve a dispute over the coverage of the Stipulated Preliminary Injunction entered in *State ex rel Dann v. New Century Financial*

Corp., et al., Cuyahoga County Case No. CV 07 618660. [Copy of Agreement is attached to this Complaint as Exhibit A, and incorporated by reference].

14. The Agreement required that Defendant Carrington engage in "good faith" loan workout negotiations with qualified eligible borrowers to achieve a "reasonable loan workout, forbearance restructuring agreement, or other resolution" that is acceptable to both the borrower and Carrington with the specific stated objective of avoiding loss of the house if reasonably possible.

15. The terms of the Agreement a) prohibited Defendant Carrington from instituting or prosecuting a foreclosure action against any borrower with a qualified loan unless done so in conformity with the provisions of the Agreement [Agreement paragraphs 5 and 8]; b) required Defendant Carrington, within sixty (60) days of a "qualified loan notice" from the State [the "workout period"] to attempt to do a loan modification in good faith with qualified loan borrowers and to consult with Plaintiffs to determine whether the borrower has the financial ability to perform under a Workout Agreement [Agreement paragraph 6]; c) required that Defendant Carrington submit its proposed "workout agreement terms" in writing to the qualified loan borrower, with a copy to the State, within twenty-one (21) days of the "qualified loan notice;" d) and required Defendant Carrington to submit a written "workout notice" to the State at the conclusion of the "workout period" detailing the status of, and Defendant Carrington's intentions for each qualified loan, and to provide the State with a copy of each executed loan modification Defendant Carrington had entered into with a qualified loan borrower. [Agreement paragraph 7].

16. Defendant Carrington has breached each of the contractual obligations described above in Complaint paragraphs 14 and 15 by: a) failing to engage in "good faith" loan workout negotiations; threatening to file, and filing, foreclosures against consumers eligible for relief pursuant to the Agreement; b) failing to offer reasonable loan workout terms designed to avoid the loss of the house; c) failing to make loan modification offers to borrowers within the time-period required under the Agreement; d) failing to provide the State with copies of loan workout offers submitted to borrowers as required by the Agreement and; e) failing to provide a "workout notice" to the State within the time-period required by the Agreement.

17. Defendant Carrington's breach of the Agreement has resulted in damages to Plaintiffs and the qualified loan borrowers eligible for relief under the Agreement.

18. After executing the Agreement, Defendant Carrington disclosed to the State that it had solicited and completed loan modifications, prior to the Agreement, with borrowers identified in the Agreement as eligible for loan modifications pursuant to the terms of the Agreement.

19. Defendant Carrington promised, upon the request of the State, to review and modify those pre-Agreement loan modifications in light of the enhanced relief available to those borrowers under the Agreement.

20. Defendant Carrington did not review and modify all the pre-Agreement loan modifications it had completed with Agreement eligible borrowers.

21. Pursuant to the terms of the Agreement, Plaintiffs were required to send each eligible borrower a copy of a survey that was attached to the Agreement [Agreement paragraph 3], and then, based upon survey responses, Plaintiffs were

required to prepare and submit to Defendant Carrington within twenty-one (21) days from the execution of the Agreement a "qualified loan notice" [Agreement paragraphs 3 & 4], consult with Defendant Carrington about the financial ability of borrowers to perform under a Workout Agreement [Agreement paragraph 6], and were prohibited from instituting any legal action against Defendant Carrington with regard to a specific qualified loan prior to receiving a "work-out notice" on that loan [Agreement paragraph 9].

22. Plaintiffs have complied with all of their contractual obligations under the Agreement.

23. In connection with the servicing of Ohio residential mortgage loans, Defendant Carrington has engaged in the following acts and practices: a) providing incompetent, inadequate and inefficient customer service; b) failing to respond to borrower requests for assistance; c) failing to offer loss mitigation options to borrowers; d) misrepresenting to borrowers the company's ability to engage in loss mitigation in Ohio; e) misrepresenting to borrowers the company's contacts with the Ohio Attorney General's Office; f) imposing unjustified and unreasonable fees and other charges, including attorneys fees; g) failing to reasonably exhaust loss mitigation efforts before filing foreclosures actions; h) threatening foreclosure while engaged in loss mitigation efforts; i) pressuring borrowers to enter into loan modifications without providing the borrower adequate time to review the contract or consult legal counsel; j) misrepresenting the terms of offered loan modifications; k) misrepresenting the benefits of offered loan modifications; l) representing a loan modification to be completed when that is not true and; m) requiring borrowers to

sign loan modifications that are unconscionably one-sided in Defendant Carrington's favor.

FIRST CAUSE OF ACTION

Breach of Contract

24. Plaintiffs incorporate by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Three (1-23) of this Complaint.

25. Defendant Carrington has breached the Agreement with Plaintiffs by impermissibly filing or reinstituting foreclosure actions against qualified loan borrowers.

26. Defendant Carrington has breached the Agreement with Plaintiffs by failing to provide proposed "workout terms" to qualified loan borrowers within twenty-one (21) days of the "qualified loan notice."

27. Defendant Carrington has breached the Agreement with Plaintiffs by failing to provide the State with a written copy of the "workout terms" submitted to qualified loan borrowers.

28. Defendant Carrington has breached its Agreement with Plaintiffs by failing to negotiate loan modifications in good faith.

29. Defendant Carrington has breached its Agreement with Plaintiffs by proposing "workout terms" not reasonably designed to avoid the loss of the house by the qualified loan borrower.

30. Defendant Carrington has breached the Agreement with Plaintiffs by failing to provide the required "workout notice" to the State.

31. Defendant Carrington has breached the Agreement with Plaintiffs by failing to review and modify the pre-Agreement loan modifications it completed with

Agreement eligible borrowers.

SECOND CAUSE OF ACTION

Violations of Ohio's Consumer Sales Practices Act

32. Plaintiff, the State of Ohio, ex rel. Richard Cordray, Attorney General, incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Three (1- 23) of this Complaint.

33. Defendant Carrington has engaged in unfair, deceptive and unconscionable acts and practices in violation of R.C. §§ 1345.02 , 1345.03, and 1345.031 and Ohio Administrative Code 109:4-3-09 by its inadequate, incompetent, and inefficient handling of complaints, inquiries, disputes, and requests for information and assistance in connection with its servicing of Ohio residential mortgage loans.

34. Defendant Carrington has engaged in unfair, deceptive and unconscionable acts and practices in violation of R.C. §§ 1345.02, 1345.03, and 1345.031 and Ohio Administrative Code 109:4-3-09, 109:4-3-27 and 109:4-3-28 in connection with the loan modification negotiations required by the Agreement entered into between the State and Defendant Carrington on January 29, 2007 by, inter alia, a) failing to provide the borrower with a copy of the loan modification prior to demanding that the borrower sign it; b) providing loan modification agreements with terms inconsistent with and more onerous than the terms agreed to by the borrower; c) requiring consumers to sign loan modification agreements containing unfair and unreasonable releases and waivers of rights and; d) by adding unreasonable, unwarranted and unearned charges, including attorneys fees, to the borrower's outstanding balance.

35. Defendant Carrington has engaged in unfair, deceptive and unconscionable acts and practices in violation of R.C. §§ 1345.02, 1345.03, and 1345.031 and Ohio Administrative Code 109:4-3-09, 109:4-3-27 and 109:4-3-28 in connection with presenting proposed loan modifications to borrowers who are in default or who have contacted Defendant Carrington due to the borrower having difficulty making their loan payments by: a) pressuring borrowers to enter into loan modifications without providing the borrower adequate time to review the contract or consult legal counsel; b) misrepresenting the terms of offered loan modifications; c) misrepresenting the benefits of offered loan modifications; d) representing a loan modification to be completed when that is not true and; e) requiring borrowers to sign loan modifications that are unconscionably one-sided in Defendant Carrington's favor.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. **ISSUE A PERMANENT INJUNCTION**, enjoining Defendant Carrington, its agents, servants, representatives, salespeople, employees, successors or assigns and all persons acting in concert or participating with it, directly or indirectly, from engaging in the acts or practices of which Plaintiffs complain and from further violating the Consumer Sales Practices Act , R.C. § 1345.01 et seq.
2. **ISSUE A PERMANENT INJUNCTION**, enjoining Defendant Carrington, its agents, servants, representatives, salespeople, employees, successors or assigns and all persons acting in concert or participating with it, directly or indirectly, from instituting, or continuing to prosecute, foreclosures against residential mortgage

loan borrowers in Ohio until such time as Defendant Carrington has a) completed its obligations under the Agreement; b) implemented mechanisms and processes reasonably designed to provide efficient, competent and adequate customer service to all of its Ohio customers and; c) modified its Loan Modification and other loss mitigation contracts to comply with Ohio consumer law.

3. **ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice described in Count Two of which Plaintiff, the State of Ohio, ex rel. Richard Cordray, Attorney General complains violates the Ohio Consumer Sales Practices Act, R.C. § 1345.01 et seq., in the manner set forth in this Complaint.

4. **ORDER** Defendant Carrington, pursuant to R.C. § 1345.07(B), to reimburse all consumers damaged by its unfair, deceptive, and unconscionable acts or practices, including non-economic damages.

5. **ORDER** Defendant Carrington to pay damages to the State resulting from Carrington's breach of the Agreement.

6. **ORDER** Defendant Carrington to reform the mortgage loan notes and completed loan modifications for the qualified loan borrowers identified as eligible for loan modifications pursuant to the Agreement, including notes modified pre-Agreement, said mortgage loan reformations to be subject to terms and conditions determined by the Court to be fair, reasonable and appropriate in light of the harm caused by Defendant Carrington's breach of the Agreement.

7. **ORDER** Defendant Carrington to provide loan modifications to the qualified loan borrowers eligible for relief pursuant to the Agreement who have not yet received or executed loan modifications, said mortgage loan modifications to be subject to

the Agreement and additional terms and conditions determined by the Court to be fair, reasonable and appropriate in light of the harm caused by Defendant Carrington's breach of the Agreement.

8. **ORDER** Defendant Carrington to pay punitive damages in an amount that this Court deems to be reasonable.

9. **ASSESS, FINE, AND IMPOSE** upon Defendant Carrington a civil penalty of Twenty Five Thousand Dollars ($25,000.00) for each violation of R.C. § 1345.01 et seq., pursuant to R.C. § 1345.07(D).

10. **ORDER**, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, that Defendant Carrington maintain in its possession and control for a period of five (5) years all business records relating to Defendant Carrington's servicing of residential mortgage loans in Ohio, and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all such records.

11. **GRANT** the Ohio Attorney General and the Ohio Department of Commerce their costs in bringing this action.

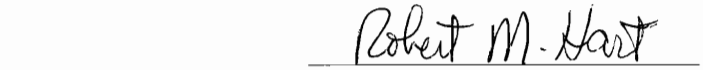
12. **GRANT** the Ohio Attorney General and the Ohio Department of Commerce their reasonable attorney fees in connection with the breach of contract claim.

13. **ORDER** Defendant Carrington to pay all court costs.

14. **GRANT** such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted

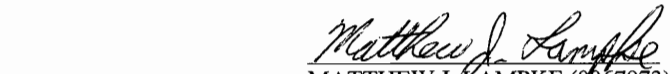
RICHARD CORDRAY
Ohio Attorney General



Robert M. Hart (0014854)
Jeffrey Loeser (0082144)
Mindy Worly (0037395)
Assistant Attorneys General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614.466.7828 [telephone]
614.466.8898 [facsimile]
Robert.Hart@ohioattorneygeneral.gov

Counsel for Plaintiff,
Ohio Attorney General

RICHARD CORDRAY
Ohio Attorney General



MATTHEW J. LAMPKE (0067973)
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
614.466.2980 [telephone]
866.403.3979 [facsimile]
Matthew.Lampke@ohioattorneygeneral.gov

Counsel for Plaintiff,
Ohio Department of Commerce

AGREEMENT FOR A STAY OF MORTGAGE LOAN FORECLOSURES

This Agreement for a Stay of Mortgage Loan Foreclosures (the "Agreement") is entered into as of January 29th, 2008 by and among Marc Dann, Attorney General of the State of Ohio and the Ohio Department of Commerce (collectively the "State") and Carrington Mortgage Services, LLC ("CMS" and with the State the "Parties" or each individually a "Party").

WHEREAS, on March 14, 2007 (the "Filing Date"), the State commenced litigation (the "Pending Action"), Case No. CV-07-618660, in the Court of Common Pleas Cuyahoga County, Ohio (the "Court") for Declaratory Judgment, Restitution, Injunctive Relief and Civil Penalties against New Century Financial Corporation, New Century Mortgage Corporation, Home 123 Corporation and all other affiliates of New Century Financial Corporation doing business in Ohio (collectively "New Century");

WHEREAS, on the Filing Date, the Court granted a Motion for Temporary Restraining Order filed by the State;

WHEREAS, on March 28, 2007, the Court entered a Stipulated Preliminary Injunction (the "Injunction") which places limits on New Century's ability to commence or continue foreclosure actions with respect to residential mortgage loans secured by property located in Ohio;

WHEREAS, CMS purchased the right to service certain mortgage loans from New Century;

WHEREAS, a dispute has arisen between the State and CMS as to whether or not the Injunction covers certain loans the servicing rights to which CMS purchased from New Century, including certain loans submitted to the State by New Century in connection with the Injunction's foreclosure review process, a dispute both the State and CMS wish to resolve with this Agreement;

DSG
CMS Initials

RMH
State Initials

NOW THEREFORE, in consideration of the following terms and conditions and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties covenant and agree as follows:

1. Attached hereto as Exhibit A is a complete list of Ohio mortgage loans the servicing rights to which were purchased by CMS from New Century that satisfy the following criteria: (i) are serviced by CMS; (ii) were in foreclosure or more than 60 days delinquent as of the Filing Date; (iii) are not business to business loans as defined by R.C. 1343.01(B)(6); (iv) are not guaranteed by FHA/VA; and, (v) have not already been released by the State from the terms of the Injunction. The loans on Exhibit A shall be referred to herein as the "CMS Loans."

2. The only loans subject to this Agreement are those loans listed on Exhibit A. No other loans currently serviced by CMS are subject to this Agreement, and no other loans serviced by CMS shall remain subject to the Injunction following the execution of this Agreement. The State hereby relinquishes its claim that any loans not listed on Exhibit A are subject to the Injunction, and the State will not object to New Century's transfer of the servicing of these loans to CMS, nor to CMS's transfer of the servicing of these loans to any other party if required to do so by contractual agreement. To the extent that any other loans are included on any list provided by New Century to the State in relation to the Pending Action, the State agrees to release such loans from the Injunction by filing an Entry to that effect with the Court in the Pending Action.

3. To the extent it has not already done so, the State shall forward to the borrowers on any of the CMS Loans (the "Borrowers") a copy of the survey that is attached hereto as Exhibit B (the "Survey"). Within 21 (twenty-one) days after the date of this Agreement (the "Qualified Loan Notice Date") the State shall provide CMS with written notice (the "Qualified Loan Notice"), of any CMS Loan for which the following conditions have been met: (i) the Borrower has returned the Survey to the State; (ii) the Borrower resided and currently resides or intends to reside in the mortgaged property and has indicated on the Survey a desire to remain in the mortgaged property;

CMS Initials

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(iii) the Borrower does not have a pending bankruptcy action; and (iv) the State has contacted the Borrower and believes, in good faith, based upon the representations made by the Borrower as to the Borrower's current financial condition and intention, that the Borrower has the financial means and willingness to either (a) bring his/her loan current; or (b) enter into and fulfill his/her obligations under a reasonable loan workout, forbearance or restructuring agreement that would avoid a foreclosure.

4. A Qualified Loan Notice must: (i) identify the loan number; (ii) identify the name of the Borrower and the address of the mortgaged property; (iii) include a statement from the State that the conditions outlined in paragraph 3 above have been met with respect to the loan and Borrower identified in the notice; and, (iv) be received by CMS prior to the Qualified Loan Notice Date. For purposes of this Agreement, any CMS Loan for which CMS has received a Qualified Loan Notice from the State that satisfies the criteria listed in this paragraph shall be a "Qualified Loan" and the Borrower on any Qualified Loan a "Qualified Loan Borrower."

5. Neither CMS nor any party servicing a Qualified Loan at CMS's direction (collectively the "CMS Parties"), shall initiate a foreclosure action, continue to prosecute a pending foreclosure action, enforce a foreclosure sale notice or evict any Borrower on any CMS Loan prior to the Qualified Loan Notice Date. After the Qualified Loan Notice Date, these restrictions shall apply only to Qualified Loans and shall not apply to any CMS Loan that is not a Qualified Loan (a "Non-Qualified Loan"). The CMS Parties shall be free to take any and all legal action available to them with respect to any Non-Qualified Loan after the Qualified Loan Notice Date.

6. During the period from the Qualified Loan Notice Date to the first business day that is 60 (sixty) days after the Qualified Loan Notice Date (the "Workout Period"), CMS shall, or CMS shall direct the company servicing any Qualified Loan on its behalf to, negotiate in good faith with each Qualified Loan Borrower in an effort to bring his/her Qualified Loan current or

CMS Initials

State Initials

otherwise avoid a foreclosure through a reasonable loan workout, forbearance restructuring agreement, or other resolution that is acceptable to both the Qualified Loan Borrower and CMS (a "Workout Agreement"). It is the specific objective of the Parties and this Agreement that, if a Qualified Borrower has the financial means to fulfill a Workout Agreement, a foreclosure and/or Qualified Borrower's loss of his house be avoided if reasonably possible; provided, however, that neither the Qualified Borrower nor the CMS Parties shall be obligated to enter into a Workout Agreement if good faith negotiations prove unsuccessful. Proposed terms for a Workout Agreement (the "Workout Agreement Terms") shall be provided in writing within twenty-one (21) days of the initiation of the Workout Period to any Qualified Borrower that the CMS Parties, in consultation with the State's representative, determine has the current financial ability to perform under a Workout Agreement. A copy of any offered Workout Agreement Terms shall be sent contemporaneously to the State's representative. The Workout Agreement Terms shall include, without limitation, one or more of the following: (i) a waiver of late fees; (ii) a waiver of servicing or foreclosure related fees, including attorney fees; (iii) extending due dates for valid arrearages; (iv) loan term modifications such as interest rate conversions or reductions; or (v) reductions in principle.

7. After the conclusion of the Workout Period, CMS shall provide the State with a written notice (the "Workout Notice") that identifies with respect to each Qualified Loan either: (i) that the loan has been brought current; (ii) that the Qualified Borrower and the CMS Parties have entered into a Workout Agreement and a copy such agreement; (iii) that the Qualified Borrower and the CMS Parties have not entered into a Workout Agreement and (a) the CMS Parties intend to continue negotiations with the Qualified Borrower or (b) the CMS Parties intend to foreclose.

8. With respect to any Qualified Loan, the CMS Parties shall not initiate a foreclosure action, continue to prosecute a pending foreclosure action, enforce a foreclosure sale

CMS Initials

State Initials

notice or evict any Qualified Borrower until the fifth (5th) business day after the date that the State receives the Workout Notice (the "End Stay Date") and after sending written notice of said action to the Qualified Borrower, and any counsel that has entered an appearance on behalf of the Qualified Borrower, in any pending foreclosure action. On and after the End Stay Date, the CMS Parties shall be free to take any and all actions consistent with applicable law and any agreement between the CMS Parties and each Qualified Borrower with respect to each of the Qualified Loans.

9. Until it receives the Workout Notice, the State shall not commence any legal proceeding against the CMS Parties in which it seeks to enjoin the CMS Parties from taking any action with respect to the Qualified Loans; provided, however, that the State may commence an action against the CMS Parties prior to its receipt of the Workout Notice if the CMS Parties fail to comply with the terms of this Agreement.

10. CMS represents that it does not own any of the loans listed on Exhibit A; however, in the event CMS becomes the owner of any such loan CMS will not sell the Loan prior to the End Stay Date.

11. Any notice sent per the terms of this Agreement may be sent via email and shall be deemed to be received for purposes of this Agreement upon receipt of the email. Notices shall be sent as follows:

To the State:

Robert M. Hart, AAG
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215-3428
614.466.7828 [phone]
614.466.8898 [fax]
rhart@ag.state.oh.us

To CMS:

CMS Initials

State Initials

Chuck Houston, VP & Asst. General Counsel
Carrington Mortgage Services, LLC
1610 East St. Andrew Place, Suite B
Santa Ana, California 92705-4932
949.517.5370 [phone]
949.517.5160 [fax]
chuck.houston@carringtonms.com

12. The Parties hereto represent and warrant to each other that: (i) the signatories to this Agreement are authorized to execute this Agreement; (ii) each has full power and authority to enter into this Agreement; and (iii) this Agreement is duly executed and delivered, and constitutes a valid, binding agreement in accordance with its terms.

13. This Agreement (i) contains the entire understanding of the Parties hereto with respect to the matters herein, (ii) supersedes all prior agreements of the Parties with respect to the subject matter of this Agreement, and (iii) shall not be amended except by a written instrument hereafter signed by all Parties hereto. No waiver of any provision of this Agreement shall be effective unless evidenced by a written instrument signed by the waiving Party. The Parties further acknowledge and agree that, in entering into this Agreement and the exhibits hereto, they have not in any way relied upon any oral or written agreements, statements, promises, information, arrangements, understandings, representations or warranties, express or implied, not specifically set forth in this Agreement or the exhibits hereto.

14. The Parties agree that the terms of this Agreement shall not be interpreted against any Party hereto due to the fact that said Party or its counsel may have drafted this Agreement.

15. This Agreement may be executed in counterparts and it is the intent of the parties that the copy signed by any Party will be fully enforceable against said Party.

16. This Agreement is to be governed by and interpreted and construed in accordance with the laws of the State of Ohio. The Parties agree that any legal action, suit or proceeding

CMS Initials

State Initials

arising out of this Agreement may be brought in the United States District Court located in the Northern District of Ohio or in the courts of the State of Ohio.

17. Any and all statements made herein are specifically limited to this Agreement, and nothing herein shall be deemed to be an admission of fault or liability by either Party.

CMS Initials

State Initials

IN WITNESS WHEREOF, each of the Attorney General for the State of Ohio, the Ohio Department of Commerce and CMS have signed this Agreement as of the date stated in the first sentence of this Agreement.

Carrington Mortgage Services, LLC.

By: [signature]
Title: President

ATTORNEY GENERAL FOR THE STATE OF OHIO

Robert M. Hart
By: Robert M. Hart
Title: Assistant Attorney General

OHIO DEPARTMENT OF COMMERCE

Matt Lampke per authority
By: Matt Lampke
Title: Asst Attorney General
DFI Counsel

DSB
CMS Initials

RMH
State Initials

Carrington Compare 01 08 2008

	Loan Number	Address	City	State	Zip
1	1001901721	P.O. Box 7	Garrettsville	OH	44231
2	0002238798	7149 State Route Unit 135	Lynchburg	OH	45142
3	1008358715	194 South Pardee Street	Wadsworth	OH	44281
4	1004572475	95 Hildegarden Street	Chillicothe	OH	45601
5	1001185461	14124 Strathmore Avenue	Cleveland	OH	44112
6	1000106352	Po Box 1331	Russells Point	OH	43348
7	0001938658	1606 Cordell Avenue	Columbus	OH	43211
8	1001790841	2657 Stamford Drive	Toledo	OH	43614
9	0001943956	2120 Bentwood Circle Apt 1d	Columbus	OH	43235
10	1005195013	5411 Amherst Drive	Cleveland	OH	44129
11	1001495910	384 Olentangy Forest Drive	Columbus	OH	43214
12	1000727789	1890 Gallo Drive	Powell	OH	43065
13	1000431562	1130 E 147th Street	Cleveland	OH	44110
14	1001969070	80 E Dawes Street 171 Space	Parres	CA	92571
15	0002082302	3583 Lane Gardens Court	Riverside	OH	45404
16	1002041123	4079 Monterey Drive	Medina	OH	44256
17	0001978879	9367 Tallmadge Road	Diamond	OH	44412
18	1001383229	105 Forest Hill Drive	Amherst	OH	44001
19	0001388166	4030 Andrews Avenue	Cincinnati	OH	45205
20	0001723017	301 S Michigan	Edon	OH	43518
21	1002475501	9709 Mt Auburn	Cleveland	OH	44104
22	1007918042	5536 Chrleston Road	Newton Falls	OH	44444
23	0001586710	57 Mcintosh Court	Howard	OH	43028
24	0001783419	845 George Road	Bidwell	OH	45614
25	1000203504	80 State Rte 60 South	New London	OH	44851
26	1000509239	1325 Brighton NE	Warren	OH	44481
27	1001477084	1744 Rosemount Road	Portsmouth	OH	45662
28	0001164578	305 Pershing Street	Salem	OH	44460
29	1001670481	8358 Four Worlds Drive Apt. 44	Cincinnati	OH	45239
30	0001051051	177 Sylvester Street	Barberton	OH	44203
31	0001623248	7610 Groveport Road	Groveport	OH	43125
32	1002833857	419 Broad Avenue Nw Apt. 1	Canton	OH	44708
33	0001913631	5213 Dolloff	Cleveland	OH	44127
34	0002075490	1035 Kipling Drive	Toledo	OH	43612
35	1000144123	4006 Jewell Street	Middletown	OH	45042
36	1008494578	494 Westgate Boulevard	Austintown	OH	44515
37	1007140783	6326 South Canterbury Road	Parma	OH	44129
38	1001059883	3387 W 151st Street	Cleveland	OH	44111
39	1006711249	462 Schaum Avenue	Zanesville	OH	43701
40	1000132261	2177 Coventry Road	Columbus	OH	43221
41	1002060049	219 Gordon Street	Piqua	OH	45356
42	1001462303	321 Marshall Drive	Xenia	OH	45385
43	1003721850	3181 E 132nd Street	Cleveland	OH	44120
44	1001565880	25 Millett Avenue	Youngstown	OH	44509
45	1001872423	2849 Shelburn Avenue	Akron	OH	44312
46	0002116127	1655 Atson Lane	Cincinnati	OH	45205
47	1004592649	4215 Free Pike	Dayton	OH	45416
48	0001837300	2735 Hiawatha Street	Columbus	OH	43211
49	0001368174	1131 Mcmyler Street NW	Warren	OH	44485
50	1010276195	3544 Nordway Road	Cleveland Heights	OH	44118
51	0001883947	2797 Osage Avenue	Akron	OH	44312
52	1001020139	3335 Reid Avenue	Lorain	OH	44055
53	1001267907	26647 Main Street	Rockbridge	OH	43149
54	1007971064	24751 Price Road	Bedford	OH	44146
55	0001668291	206 East High Street	Fostoria	OH	44830
56	1007164365	419 Vaughn Street	Jackson	OH	45640
57	0001918865	580 Oneida Avenue	Akron	OH	44303
58	1006699557	786 Norwalk Court	Lawrenceville	GA	30043
59	0001651020	2613 Argonne Road	Portsmouth	OH	45662

	Loan Number	Address	City	State	Zip
60	1001476254	21451 North Street	Euclid	OH	44117
61	0000942551	3561 Cedarbrook Road	University Heights	OH	44118
62	1000255565	7101 Wagon Wheel Trail	Hillsboro	OH	45133
63	1001643369	172 Shelby Avenue	Akron	OH	44130
64	1002344859	2010 Queensbridge Drive	Columbus	OH	43235
65	1001791476	988 Brunswick	Cleveland Heights	OH	44112
66	1002088920	8841 Mitchell Dewitt Road	Plain City	OH	43064
67	1002737532	716 N Detroit Street	Kenton	OH	43326
68	0000999799	871 Manor Circle	Howard	OH	43028
69	1006835776	838 E Summit Street	Alliance	OH	44501
70	1002129789	11703 Oakview Avenue	Cleveland	OH	44108
71	0001834707	25 Carlin Drive	Logan	OH	43138
72	1000867592	508 East 140th Street	Bratenahl	OH	44110
73	1002446204	3803 Homewood Avenue	Toledo	OH	43612
74	0001933007	560 East Avenue	Tallmadge	OH	44278
75	0002017640	1195 Aberdeen Avenue	Columbus	OH	43211
76	1007753335	3131 Windsor Place SW	Canton	OH	44710
77	1002066212	3212 Meadowwood Street	Massillon	OH	44646
78	1001468986	34974 Us Rt 50	Londonderry	OH	45647
79	1008250233	1683 Hower Avenue	East Cleveland	OH	44112
80	1008582955	401 Wood Street	Pataskala	OH	43062
81	1006059427	3251 Cross Keys Road	Columbus	OH	43232
82	1002025043	618 Arlington Avenue	Mansfield	OH	44903
83	1000377586	2840 E 99th Street	Cleveland	OH	44104
84	1000345120	1284 U.S. 50	Milford	OH	45150
85	1002009944	997 Snowfall Spur	Akron	OH	44313
86	0001333827	5729 West Fork Road	Cincinnati	OH	45247
87	0001516814	24155 Yearsley Road	Marysville	OH	43040
88	1000754277	12158 Seaford Drive	Cincinnati	OH	45231
89	0002010375	945 Smiley Avenue	Cincinnati	OH	45240
90	1001997879	12002 Saywell Avenue #Up	Cleveland	OH	44108
91	1008234136	114 Ridgewood Avenue	Huron	OH	44839
92	1000688722	527 Woodlawn Avenue	Cincinnati	OH	45205
93	1000675969	115 Sheridan Avenue	Niles	OH	44446
94	0002129093	1 Hillpoint Street	Trotwood	OH	45426
95	0001816624	1987 Oxford Street	Twinsburg	OH	44087
96	0001747418	914 Waverly Road	Eastlake	OH	44095
97	1001242685	1614 Garfield Avenue SW	Canton	OH	44706
98	0001393421	112 N Florence Street	Springfield	OH	45505
99	0001688914	2020 Warwick Avenue	Youngstown	OH	44505
100	1001193176	13720 Rockside Road	Garfield Heights	OH	44125
101	0001840248	P.O. Box 307552	Columbus	OH	43230
102	0001784728	10 Jennings Court	Shelby	OH	44875
103	0001757049	412 Charles Street	Middletown	OH	45042
104	1002081623	4423 Dawnshire Drive	Parma	OH	44134
105	0001554491	1420 Fox Den Trail	Canfield	OH	44406
106	1001529331	10229 Dale Avenue	Cleveland	OH	44111
107	1001413241	932 Storer Avenue Apt 34	Akron	OH	44320
108	1001449043	3694 Lindholm Road	Cleveland	OH	44120
109	1001986444	210 Roslyn Avenue NW	Canton	OH	44708
110	1003650141	3385 Lakeview Trails	Columbus	OH	43232
111	1000980558	15824 Richard Drive	Brook Park	OH	44142
112	1008199184	5297 Clinton Avenue	Lorain	OH	44055
113	0001796155	1538 N Cove Boulevard	Toledo	OH	43606
114	0001656874	263 Sobul Avenue	Akron	OH	44305
115	1007540501	13 Greer Street	Mount Vernon	OH	43050
116	0002226040	272 Shields Road	Youngstown	OH	44512
117	1001293120	6895 Tobik Trail	Parma Heights	OH	44130
118	1002005715	3859 Sandy Lake Road	Ravenna	OH	44266

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Nichole Williams,

Johnson Sendolo,

Carey Koppenberg,

Carrie Strohmayer,

On behalf of themselves and all others similarly situated,

Plaintiffs.

vs.

Timothy F. Geithner, as United States Secretary of the Treasury

U.S. Department of the Treasury,

The Federal Housing Finance Agency, as conservator for the Federal National Mortgage Association, d/b/a Fannie Mae and the Federal Home Loan Mortgage Corporation d/b/a Freddie Mac,

Federal National Mortgage Association, d/b/a Fannie Mae, and

Federal Home Loan Mortgage Corporation d/b/a Freddie Mac,

Ocwen Loan Servicing, LLC,

GMAC Mortgage, f/d/b/a Homecomings Financial,

U.S. Bank,

Defendants.

JURY TRIAL REQUESTED

Civil: 09-CV-1959 ADM JJG

FIRST AMENDED CLASS ACTION COMPLAINT

Ms. Nichole Williams, Mr. Johnson Sendolo, Ms. Carey Koppenberg, and Ms. Carrie Strohmayer, on behalf of themselves and all others similarly situated, allege the following:

INTRODUCTION

1. Plaintiffs Johnson Sendolo and Nichole Williams are the types of people that the federal government's foreclosure prevention program was intended to help. Both had good jobs. Mr. Sendolo was a medical coder for a health insurance company, and Ms. Williams was a legal assistant. But, when the economy faltered, they were both laid off. Eventually, after depleting their savings, they fell behind on their monthly mortgage payments. Now, both have managed to get new jobs and have steady income, but they need a loan modification to get current and make their mortgage loan sustainable.

2. Plaintiffs Carey Koppenberg and Carrie Strohmayer are also the types of people that the federal government's foreclosure prevention program was intended to help. Although they did not lose their jobs, their financial situation faltered. Ms. Koppenberg's husband died in August 2008, leaving her with only one income to pay the mortgage. Ms. Strohmayer, who worked in the home, went through a divorce and is caring for four children, one who is disabled. Currently, they both have steady income, but they also need a loan modification to get current and make their mortgage loan sustainable.

3. All four Plaintiffs are eligible for the federal government's Home Affordable Modification Program ("HAMP"), but they have all been denied.

4. Mr. Sendolo and Ms. Koppenberg applied for the program, and then, without being given any reason or an opportunity to appeal, their applications were denied and their houses were sold at a Sheriff's Sale.

5. Ms. Williams faxed, emailed, and verbally requested a modification through HAMP with the help of her housing counselor, but Ms. Williams' requests were ignored. Instead, the servicer offered its own non-HAMP three-month payment plan. The temporary plan does not offer any of the advantages of a HAMP modification and foreclosure continues to be eminent. Similarly, Ms. Strohmayer has also contacted her servicer on many occasions, specifically requesting a HAMP loan modification. Once, she was told she was approved, and then later, she was told she was denied. Ms. Strohmayer is simply in limbo.

6. In all cases, the Plaintiffs' constitutional rights to procedural due process have been violated. HAMP is part of a $75 billion government program to prevent foreclosures, approximately six times larger than the National School Lunch Program. Both the enabling legislation and the federal government's own implementing guidelines make it clear that eligible and qualified homeowners "shall" receive a loan modification, thus creating legal entitlements for thousands of Minnesota homeowners facing foreclosure. Yet, the government has denied Mr. Sendolo, Ms. Williams, Ms. Koppenberg, and Ms. Strohmayer and others like them the most fundamental due process protections: notice of the basis for a decision and an opportunity to appeal.

7. HAMP does not require that homeowners are given any notice of a denial at all, and for homeowners, like Mr. Sendolo, the notices that are given do not provide

any specific reason for the denial. HAMP is complex, and the lack of transparency prevents Mr. Sendolo and others like him from correcting errors or misinformation. The lack of opportunity to appeal makes it even more difficult to access the benefits. Now that Mr. Sendolo's house has been sold, there is also no formal and uniform method to undo the wrongful foreclosure.

8. Plaintiffs are seeking to enjoin all foreclosures in Minnesota of mortgages owned by Fannie Mae or Freddie Mac, or serviced by one of the mortgage loan servicers who have agreed to administer the HAMP program and provide loan modifications to the homeowners they service.

PARTIES

9. Plaintiff Nichole Williams resides at 9129 Maryland Avenue North, Brooklyn Park, MN 55445 with her two daughters, ages 15 and 20. 9129 Maryland Avenue North is Ms. Williams' primary residence.

10. Plaintiff Johnson Sendolo resides at 3218 Leyland Trail, Woodbury, Minnesota 55125. 3218 Leyland Trail is Mr. Sendolo's primary residence.

11. Plaintiff Carey Koppenberg resides at 501 North Linden Street, Belle Plaine, Minnesota 56011. 501 North Linden Street is Ms. Koppenberg's primary residence.

12. Plaintiff Carrie Strohmayer resides at 10926 Xylite Court Northeast, Blaine, Minnesota 55449. 10926 Xylite Court Northeast is her primary residence.

13. Defendant Timothy F. Geithner is Secretary of the United States Department of the Treasury, and he has been named as a defendant in this action in his official capacity as Treasury Secretary.

14. Defendant United States Department of Treasury ("Treasury") has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' constitutional rights to procedural due process. Defendant United States Department of Treasury is located at 1500 Pennsylvania Avenue NW, Washington DC 20220.

15. Defendant Federal Housing Finance Agency has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' Constitutional rights to procedural due process, role in creating the policies for HAMP as mandated by statute, and as conservator for Fannie Mae and Freddie Mac. Defendant Federal Housing Finance Agency is located at 1700 G Street, Washington DC 20552. Defendant Federal Housing Finance Agency is the conservator for Federal National Mortgage Association d/b/a Fannie Mae and The Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac ("Federal Housing Finance Agency").

16. Defendant Federal National Mortgage Association d/b/a Fannie Mae ("Fannie Mae") has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' Constitutional rights to procedural due process, authority to issue guidelines and rules related to the HAMP program in coordination with the Treasury Department, and as fiscal agent for HAMP. Defendant Fannie Mae is located at 3900 Wisconsin Avenue NW, Washington DC 20016.

17. Defendant Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac ("Freddie Mac") has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' Constitutional rights to procedural due process, authority to issue guidelines and rules related to the HAMP program in coordination with the Treasury Department as statutorily required, and as the entity required to hold mortgage loan servicers accountable for compliance with all HAMP guidelines. Defendant Freddie Mac is located at 8200 Jones Branch Drive, McLean, VA 22102.

18. Defendant Ocwen Loan Servicing has been named as a defendant in this action because it has, in administering HAMP on behalf of and as an agent of the government, violated Plaintiff Johnson Sendolo's procedural due process rights. Ocwen Loan Servicing ("Ocwen") is a Delaware corporation, and has a registered agent in the State of Minnesota at 380 Jackson Str #700, Saint Paul, MN 55101.

19. GMAC Mortgage is the successor in interest to Homecomings Financial, which are both within the GMAC family of companies ("Homecomings"). Homecomings has been named as a Defendant in this action because it has, in administering HAMP on behalf of and as an agent of the government, violated Plaintiff Nichole William and Plaintiff Carrie Strohmayer's procedural due process rights. Homecomings is a Delaware corporation, and has a registered agent in the State of Minnesota at 380 Jackson Str. #700, Saint Paul, MN 55101.

20. Defendant U.S. Bank, a successor in interest to U.S. Bancorp, has been named a Defendant in this case, because it has, in administering HAMP on behalf of and

as an agent of the government, violated Plaintiff Carey Koppenberg's procedural due process rights. U.S. Bancorp is located at the U.S. Bancorp Center, 800 Nicollet Mall, Minneapolis, Minnesota 55402.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1331 (2008), because this action arises under the Constitution of the United States of America.

22. Venue is proper pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the State of Minnesota and the properties that are the subject of this action are situated in the State of Minnesota.

FACTS

I. JOHNSON SENDOLO, NICHOLE WILLIAMS, CAREY KOPPENBERG, AND CARRIE STROHMAYER HAVE BEEN WRONGFULLY DENIED ACCESS TO A HAMP LOAN MODIFICATION.

A. Johnson Sendolo's Denial Of A Loan Modification and Sheriff's Sale Was In Violation Of His Due Process Rights.

23. Johnson Sendolo came to the United States in the early 1980s, just as the violence began to escalate in his home country of Liberia.

24. In Liberia, he had worked for the government in the health ministry. Once here, he became a United States citizen and found work in the medical information industry. Specifically, Mr. Sendolo worked as a medical record coder.

25. Eventually, Mr. Sendolo moved to Minnesota with his family, and on September 9, 2005, he purchased his first home in Woodbury, Minnesota.

26. In order to finance the purchase, Mr. Sendolo obtained an 80/20 loan, meaning that he got two loans through Ocwen, which still services both mortgage loans.

27. The first mortgage loan was in the amount of $143,137.

28. The second mortgage was for $35,785.

29. For the first three years, Mr. Sendolo made every loan payment and was careful never to fall behind. Then, in September 2008, Mr. Sendolo lost his job.

30. Nonetheless, he continued making payments, and even called Ocwen and told them about his situation and that he needed help.

31. Eventually his savings ran out, and he stopped making mortgage payments in December 2008.

32. In the meantime, Mr. Sendolo also started working with a mortgage loan counselor at Washington County Housing and Redevelopment Authority, and together they continued to contact Ocwen and seek help.

33. Ocwen is one of the mortgage loan servicers who agreed to provide loan modifications through and administer HAMP on behalf of the government, as well as abide by all of the government's program requirements.

34. At the end of March, Mr. Sendolo submitted paperwork to Ocwen for a HAMP modification of his first mortgage.

35. Mr. Sendolo also submitted paperwork to Ocwen for a modification of his second mortgage.

36. Mr. Sendolo was a good candidate for a loan modification because, at the time, he had income through a new job and continues to have income.

37. Although he did not get paid as much as he had previously, Mr. Sendolo had found a part-time job for about thirty-two hours per pay period. He also received unemployment income, and Mr. Sendolo's son had moved back home, while attending school, and his son often pays rent.

1. Johnson Sendolo Is Eligible For A Loan Modification Through HAMP.

38. Mr. Sendolo meets all of the eligibility requirements for a loan modification through HAMP. Eligibility for HAMP is determined by five general criteria.[1] First, the home must be the applicants' primary residence. Second, the amount owed on the first mortgage must be equal to or less than $729,750. Third, a homeowner must be "having trouble" paying their mortgage. This means that the homeowner is delinquent (missed two payments) or default is "imminent" due to the nature of the homeowner's hardship and assets. Fourth, the mortgage was originated before January 1, 2009. Fifth, the payment is more than 31% of the homeowner's gross monthly income.

39. In this case, Mr. Sendolo's mortgage relates to his primary residence and the first mortgage is far less than $729,750.

40. Mr. Sendolo is delinquent in the mortgage loan, meaning he owes two or more monthly payments.

41. The mortgage loan was originated before January 1, 2009, and the monthly mortgage payment is more than 31% of his gross income.

[1] These are the five general criteria, but Fannie Mae and Freddie Mac have identified a few other minor criteria that generally would not apply to most homeowners. For example, in its guidance Fannie Mae prohibits homeowners who have already obtained a modification through HAMP to obtain another one.

42. However, despite satisfying these eligibility criteria, Mr. Sendolo's access to HAMP was denied.

2. Mr. Sendolo Was Not Given Adequate Notice Related To His Denial or Opportunity To Appeal The Decision.

43. After waiting over a month, Mr. Sendolo's mortgage loan counselor was e-mailed a boilerplate letter from Ocwen stating that he was denied a HAMP modification. Attached as Exhibit A is a copy of the denial letter, which was sent in a "track changes" format.

44. The letter did not state any reason why Mr. Sendolo had been denied. The letter only provides theoretical examples of reasons for a denial, none of which apply to Mr. Sendolo.

45. This surprised Mr. Sendolo, because Ocwen had already granted a loan modification of his second mortgage, although the modification was not through HAMP.

46. The letter also provided no information related to how Mr. Sendolo could appeal the decision or even if Ocwen had any procedures to handle adverse HAMP decisions.

47. The letter also did not describe any information about other loan modification or loss mitigation programs that were offered through Ocwen.

48. If, for whatever reason, a homeowner is denied a HAMP modification, the government requires that all other loan modification or loss mitigation programs be considered for the homeowner *prior* to initiating foreclosure proceedings.

49. The letter does not provide any indication as to whether such an evaluation ever occurred.

3. Johnson Sendolo's House Was Foreclosed and Sold At A Sheriff's Sale.

50. On June 25, 2009, Mr. Sendolo's home was sold at a Sheriff's Sale to Ocwen. Under Minnesota law, Mr. Sendolo now has six months to "redeem," meaning that he has an opportunity to pay back the full amount of the mortgage loan.

51. If Mr. Sendolo fails to redeem, he must leave the property by the end of December. The whole process has been confusing and stressful.

52. In addition to his adult son, Mr. Sendolo has two children living at home with him. He's not sure exactly what he is going to do, and only wants to stay in his house and make his mortgage work. Mr. Sendolo does not have the money to redeem and he cannot refinance, because the house has lost value. Mr. Sendolo estimates that the total amount of his mortgages is approximately $14,000 more than the house is worth.

53. If Mr. Sendolo and his family are forced out of their house after the end of the redemption period, the eviction will cause him irreparable harm.

B. Nichole William's Denial Of A Loan Modification Was In Violation Of Her Due Process Rights.

54. In 2004, Nichole Williams purchased her first home, and then refinanced the original mortgage loan about a year later.

55. Ms. Williams had wanted to get a 30-year, fixed-rate mortgage loan. But the mortgage broker used a typical "bait and switch" with a lot of pressure.

56. Ms. Williams ended up with an "80/20 loan," meaning that there was a first mortgage loan for 80% of the value and a smaller, second mortgage that was 20% of the value.

57. The first mortgage loan for approximately $232,000 is serviced by Homecomings, a GMAC Company, and the second mortgage loan company is serviced by HSBC.

58. The second mortgage was approximately $58,000.

59. Ms. Williams made payments on the mortgage loans, but on June 20, 2007 she was laid-off and lost her job as a legal assistant.

60. Ms. Williams was unemployed for six months, and she fell behind. Meanwhile, Ms. Williams' child support payments stopped causing further financial hardship.

61. Eventually, Ms. Williams obtained another legal assistant position. She could make some payments, but she was still significantly behind.

62. In July 2008, she sought a loan modification from Homecomings, and a few months later, Ms. Williams received an offer from Homecomings.

63. This began an on-going struggle to obtain a loan modification. On multiple occasions, she was given a "temporary" loan modification of two or three months only to have a permanent modification denied for dubious, if not factually wrong reasons, and then offered another temporary modification. None of these modifications were through HAMP.

1. Nichole Williams Is Eligible For A Loan Modification Through HAMP.

64. After HAMP was announced by Defendants, Ms. Williams worked with her housing counselor to gain access to the government program. Homecomings, a subsidiary of GMAC, is one of the mortgage loan servicers who agreed to provide loan modifications through and administer HAMP on behalf of the government, as well as abide by all of the government's program requirements.

65. On multiple occasions Ms. Williams specifically asked for a modification under the HAMP program, and stated that she wanted a modification under HAMP.

66. She or her housing counselor made these requests to participate in HAMP by facsimile, e-mail, and verbally over the phone.

67. Ms. Williams is eligible for HAMP, because she meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than $729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent, approximately four monthly payments are past due. Finally, the monthly payments for the mortgage loan are more than 31% of her gross monthly income.

2. Nichole Williams Is Effectively Denied Access To A Loan Modification Through HAMP.

68. Despite Ms. Williams' specific requests, on June 16, 2009, Homecomings did not offer a temporary or permanent loan modification through HAMP. Instead, the offer was just another temporary Homecomings program similar to others that she had been offered.

69. The temporary program offers none of the benefits or sustainability that is a part of a loan modification through HAMP. Specifically, Ms. Williams is to make three monthly payments of $1,582.21 (more than 31% of her monthly income), and then it is unclear what will happen after the three months.

70. Ms. Williams knows that she does not have enough money to get current on her mortgage loan, and is fearful that at any moment Homecomings will initiate foreclosure proceedings even though she is eligible for HAMP. Once foreclosed, Ms. Williams and her children will be uprooted and it will cause irreparable harm.

C. Carey Koppenberg's Denial Of A Loan Modification and Sheriff's Sale Was In Violation Of Her Due Process Rights.

71. Ms. Koppenberg and her husband owned their home for fifteen years. They purchased the property in June of 1994. They had two affordable mortgages on the property. Since they were both working, they were able to make their mortgage payments.

72. On August 27, 2008, Ms. Koppenberg's husband passed away. Although his medical expenses were largely covered by insurance, there was little life insurance to help Ms. Koppenberg continue making the mortgage payments.

73. After Ms. Koppenberg's husband passed away, she became delinquent on the mortgage payments. Although she continued to work, and even took on a part-time job, it was not enough to cover the loss of his income.

1. Carey Koppenberg Is Eligible For A Loan Modification Through HAMP.

74. In the late fall of 2008, Ms. Koppenberg began working with a housing counselor from Carver County Community Development Agency, to help save her home from foreclosure.

75. Once the Home Affordable Modification Program was announced, the housing counselor recommended that Ms. Koppenberg apply for the program, because they both believed she was eligible.

76. Ms. Koppenberg's mortgage loan is owned by Fannie Mae.

77. Ms. Koppenberg is eligible for HAMP, because she meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than $729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent; indeed, her home sold at a sheriff's sale. Finally, the monthly payments for the mortgage loan were more than 31% of her gross monthly income.

78. Ms. Koppenberg completed the HAMP application and submitted it her mortgage servicer, U.S. Bank in late May 2009. Ms. Koppenberg even called to confirm they had received her application packet. A representative from U.S. Bank confirmed that they had received her HAMP application on June 1, 2009.

2. Carey Koppenberg's House Was Foreclosed and Sold At A Sheriff's Sale Without Adequate Notice or Opportunity to Appeal The Decision.

79. Ms. Koppenberg's home was sold at a sheriff's sale on June 7, 2009, despite the ban on foreclosures while HAMP applications are pending.

80. US Bank, as an agent of the United States Department of the Treasury, the Federal Housing Finance Agency and Fannie Mae, failed to follow the HAMP guidelines loss mitigation waterfall, and violated Ms. Koppenberg's procedural due process rights by denying her access to a benefit for which she is entitled.

81. Before Ms. Koppenberg's home was sold at the sheriff's sale, she was not given notice of denial from HAMP, nor was she given an opportunity to appeal the decision.

82. Currently, Ms. Koppenberg does not have the money to redeem her property by December 7, 2009. Ms. Koppenberg is under stress and fearful of what will happen in December, because she does not have any other housing arrangements.

D. Carrie Strohmayer's Denial Of A Loan Modification Was In Violation Of Her Due Process Rights.

83. In the fall and winter of 2008, Ms. Strohmayer anticipated a financial hardship approaching, as her marriage was ending. As part of the separation, Ms. Strohmayer agreed to take full responsibility of the home. Her ex-husband moved out and stopped contributing towards the mortgage in January 2009.

84. Ms. Strohmayer's mortgage loan is owned by Fannie Mae.

85. Despite the drastic fall in household income, Ms. Strohmayer prioritized her mortgage payments, and was current until June 2009. This meant, however, that she was late making other monthly payments, such as her car payment.

86. In March 2009, Ms. Strohmayer called her mortgage servicer, GMAC Mortgage, about applying for a HAMP loan modification. She filled out and sent in the appropriate documentation to apply for the program.

1. Carrie Strohmayer Is Eligible For A Loan Modification Through HAMP.

87. GMAC Mortgage, as an agent of the United States Department of the Treasury, the Federal Housing Finance Agency and Fannie Mae, failed to follow the HAMP guidelines loss mitigation waterfall, and violated Ms. Koppenberg's procedural due process rights by denying her access to a benefit for which she is entitled.

88. Ms. Strohmayer is eligible for the HAMP loan modification. She meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than $729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent; she is currently about three months behind in payments. Finally, the monthly payments for the mortgage loan are more than 31% of her gross monthly income.

89. Currently, Ms. Strohmayer is not working, but she is receiving income. First, she received about $900 a month in child support payments. Second, she receives about $2,300 a month in social security income for the care she gives her nephews.

90. When her brother was killed in a car accident in 2002, Ms. Strohmayer took responsibility for her two nephews, because the children's mother was unable to do so. The youngest nephew needs full-time care as he is disabled.

2. Carrie Strohmayer Was Denied Access To A Loan Modification Through HAMP.

91. After Ms. Strohmayer filled out and sent in her HAMP application in March, she called on or about April 14, 2009 for an update on the application. She was told by a representative that GMAC Mortgage had not yet received her application.

92. On or about April 15, 2009, Ms. Strohmayer called back, and was told by a different GMAC Mortgage representative that they had, in fact, received her HAMP application.

93. The representative then stated they would need another fourteen (14) days, but then GMAC would call Ms. Stroymayer back to let her know whether or not she was accepted into the program.

94. Ms. Strohmayer never received that phone call, so she called GMAC back in May to check the status of her application. She was told by a representative that she was accepted into HAMP, but she never received any paperwork notifying her of her acceptance.

95. June 2009 was the first month that Ms. Strohmayer was unable to make her regular monthly mortgage payment. She has not been able to catch up since.

96. On Tuesday, July 28, 2009, Ms. Strohmayer called GMAC again, to check the status of her loan modification. Another GMAC representative told her that she was denied a HAMP loan modification. The representative further stated that GMAC had communicated this message to her previously. Ms. Strohmayer, however, never received any denial communication – whether by phone or mail – from GMAC Mortgage.

97. The representative from GMAC stated the reason she was denied was because her debt-ratio was too high. Ms. Strohmayer was not given an explanation of what numbers were used to make this determination. This explanation is confounding, because, if Ms. Stohmayer's debt wasn't high, she would not need a HAMP loan modification.

98. Ms. Strohmayer demanded a written explanation of her denial, but has not received a written denial letter.

E. Congress Acts and the Federal Government Gets The Authority To Create A Foreclosure Prevention and Loan Modification Program.

99. Congress passed the Emergency Economic Stabilization Act of 2008 (the "Act") on October 3, 2008.

100. The purpose of the Act was to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority was used, in part, to "preserve homeownership."

101. In addition to allocating $700 billion to the United States Department of the Treasury, the Act also specifically granted the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program or TARP. 12 U.S.C. §§ 5211, 5225 (2008).

102. In exercising its authority to administer TARP, Congress mandated that the Secretary "shall" take into consideration the "need to help families keep their homes and to stabilize communities." 12 U.S.C. § 5213(3) (2008). To that end, Congress created two specific sections within Title I of the Act related to homeowners. *See Id.*

103. Section 109 is entitled "Foreclosure Mitigation Efforts," and specifically states that the Secretary "shall" implement a plan to "maximize assistance for homeowners." 12 U.S.C. § 5219(a). These efforts are to be coordinated with other federal agencies including the Federal Housing Finance Agency, which is the conservator for Fannie Mae and Freddie Mac. *Id.*

104. The Act further requires the Secretary to consent to any reasonable loan modification offer:

> [T]he Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitations on modifications.

12 U.S.C. 5219(c).

105. Similarly, Section 110 requires the Federal Housing Finance Agency, as conservator for Fannie Mae and Freddie Mac, to create and implement a plan to prevent foreclosures. Specifically, the Act states:

> [T]he Federal property manager [defined, in part, as the Federal Housing Finance Agency] shall implement a plan that seeks to maximize assistance for homeowners and...minimize foreclosures.

12 U.S.C. § 5220 (b).

106. The statutory tools to be used by Fannie Mae and Freddie Mac include reducing interest rates and reducing the principal balance of mortgage loans.

F. The Creation of the Making Home Affordable Program and HAMP.

107. Pursuant to its legal authority, as granted to it by Congress, both the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the Making Home Affordable program on February 18, 2009.

108. Specifically, the Making Home Affordable program consists of two sub-programs.

109. The first sub-program relates to the creation of refinancing products for individuals with minimal or negative equity in their home, which eventually was entitled the Home Affordable Refinance Program or HARP.

110. The second sub-program relates to the creation and implementation of a uniform loan modification protocol, which eventually was entitled the Home Affordable Modification Program or HAMP.

111. The scope of HAMP is broad; approximately 85 percent of homeowners in the United States are eligible for the program.

112. Homeowners who meet the government's criteria and standards for the program are entitled to a loan modification pursuant to the terms of HAMP.

113. A mortgage loan servicer implementing HAMP does not have discretion to deny a homeowner access to the HAMP program, if the homeowner satisfies the government's criteria for the program.

114. HAMP is funded by the federal government, primarily with TARP funds. The Treasury Department has allocated at least $50 billion of its TARP money to fund the refinance and modification programs and offered an additional $25 billion of non-TARP funds, totaling $75 billion.

115. By statute, the Treasury department, Fannie Mae and Freddie Mac must jointly develop the policies and procedures for the Making Home Affordable Program and HAMP.

116. Fannie Mae is also the fiscal agent of the federal government for HAMP.

117. Freddie Mac is responsible for compliance, meaning auditing mortgage loan servicers for compliance with program rules and protocols.

118. HAMP applies to any mortgage loan owned by Fannie Mae and Freddie Mac, as well as any loans owned by companies that accepted other TARP money or who volunteered to participate in the program.

119. As of the time of filing this action, there are approximately thirty-one servicers who have signed a contract to administer and participate in HAMP in addition to other servicers who manage Fannie Mae and Freddie Mac loans.

120. Ocwen and Homecomings both have voluntarily agreed to administer HAMP and participate in the program.

121. In signing a contract with the Treasury Department, Ocwen and Homecomings agreed to be bound by HAMP requirements and must abide by the framework and protocols for administering the benefits of HAMP.

1. Defendants Create A Framework For The Implementation of HAMP.

122. From March 4, 2009 to present, the Treasury Department, Fannie Mae and Freddie Mac have issued a series of directives for the servicers of mortgage loans and the implementation of HAMP.

123. The directives set forth the framework and protocol to implement HAMP. Notably, Fannie Mae and Freddie Mac both mandate that its servicers participate in HAMP. Guidelines issued by Fannie Mae, Freddie Mac, or the Treasury Department are also legally binding for program participants.

124. HAMP is always clearly identified as a program of the federal government. For example, an introductory letter to homeowners is often co-branded with the government's Making Home Affordable and servicer logos, and then begins with the following introduction:

> There is help available if you are having difficulty making your mortgage loan payments. ***You may be eligible for the Home Affordable Modification program, part of the initiative announced by President Obama to help homeowners.***

125. HAMP is premised on the idea that getting a homeowner's monthly payment to 31% of the homeowner's gross monthly income will be a sustainable loan

modification. *See* U.S. Department of Treasury's Making Home Affordable Summary of Guidelines (March 4, 2009) (attached to the Complaint as Exhibit B).

126. Prior to any foreclosure, the mortgage loan servicers are required to follow three basic steps for all distressed homeowners with the goal of reaching a monthly mortgage payment of 31% of the homeowner's gross monthly income. *See* Fannie Mae, Announcement 09-05R (Exhibit C); Freddie Mac, Single Family Servicer Guide C65.1 (Exhibit D); Treasury Department, Supplemental Directive 09-01 (Exhibit E).

127. The first step is to identify the homeowner's income. Initially the income may be unverified, and then the mortgage loan servicer must create a three-month trial period while it verifies income. Once income is verified, the modification becomes permanent.

128. The second step is to calculate the "target payment," which is 31% of the homeowner's gross monthly income.

129. The third step is to implement the "loss mitigation waterfall."

130. The servicer is required to use each loss mitigation tool within the waterfall, in the correct order, until the servicer reaches the target payment.

131. There are four loss mitigation tools in the waterfall, which must be applied in the following order: (a) capitalizing arrearages, meaning that accrued interest, funds advanced by the servicer, and appropriate foreclosure expenses incurred by the servicer are added to the existing principal balance of the mortgage loan; (b) reducing the interest in increments of .125% until the target payment is reached or the servicer reaches a 2% floor; (c) extending the term of the loan or amortization period by one month increments

until the target payment is reached, but the loan schedule cannot exceed 480 months (40 years) from the date of the loan modification; and, finally (d) forbearing a part of the principal balance, meaning that the principal amount of the loan will be reduced in $100 increments until the target payment is reached. The reduction, however, is not forgiven. It is simply a balloon payment that must be paid at the end of the loan term. The principal balance forbearance does not accrue interest or amortize. It is also not included in calculating a monthly payment.

132. Initial eligibility for HAMP is determined by the five general criteria previously described above.

2. The government has no specific notification procedures or disclosure requirements for a homeowner that is denied access to HAMP.

133. There are no requirements that homeowners are told the specific reasons for their denial of a HAMP modification, and, in fact, the government requires no notice at all.

134. In contrast, all HAMP servicers have very specific requirements, instructions, and model letters related to homeowners who are accepted into the program.

135. But, denial is devoid of uniformity and standards.

136. There is no model letter related to a denial of a HAMP modification.

137. There are no requirements to inform a homeowner why they are denied access to the program, or any transparency related to how the loss mitigation waterfall was applied.

138. There is only one sentence in the entire guidance issued by Fannie Mae and the Treasury Department that addresses the topic of denial.

139. In it, both Fannie Mae and the Treasury Department simply encourage servicers to communicate in writing, but such communication is not required and the notice does not need any detail:

> If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HMP after the borrower has submitted a signed Trial Period Plan to the servicer, the servicer should promptly communicate that determination to the borrower in writing…

140. The one sentence in the Fannie Mae and Treasury's guidance also assumes that there was a trial period plan, which there may not be.

141. There is no written guidance or requirements at all related to homeowners who do not sign a Trial Period Plan and are denied access to the program without being given a temporary modification.

142. Similarly, Freddie Mac has a half dozen standard documents or letters to be used for correspondence with homeowners who are eligible and accepted into HAMP.

143. None of these documents relate to what and how a denial of access to HAMP should be communicated with homeowners. Elsewhere in the guide, there are no requirements that homeowners be contacted in writing related to their denial.

144. Indeed, the only other person that is required to be informed in writing of the denial and basis for the denial by the servicer is Freddie Mac.

145. Upon information and belief, even those homeowners who happen to receive notice that they were denied access to HAMP are still denied procedural due

process, because the notice does not provide the specific reasons for the denial, the Net Present Value formula and application, or an opportunity to appeal.

3. Fannie Mae and Freddie Mac have no process to appeal an adverse decision or undo a wrongful foreclosure.

146. As alleged above, Defendants have created specific eligibility requirements and procedures that servicers must implement to get the monthly payments of distressed homeowners to the target payment.

147. Defendants have also ordered all Fannie Mae and Freddie Mac mortgage loan servicers and other participating servicers to suspend foreclosure proceedings for all eligible homeowners until they are determined to be eligible for HAMP or, if not eligible for HAMP, another loss mitigation program offered by the servicer.

148. Specifically, on March 4, 2009, the Treasury Department, Fannie Mae, and Freddie Mac ordered all of its servicers to cease foreclosures until homeowners were evaluated for eligibility for a modification through HAMP.

149. Nonetheless, if a homeowner has been wrongfully foreclosed upon prior to evaluation for eligibility in the program, if the servicer failed to comply with the loss mitigation waterfall, or if the foreclosure was otherwise conducted in violation of the homeowner's procedural due process rights, Defendants have no uniform program or procedure to ensure that the homeowner is able to appeal and that such an appeal will be properly considered and impartially decided.

150. There is also no mandatory process for how an appeal is communicated or triggered, nor is there evaluation criteria that all servicers must use when their decision to

deny access to HAMP is appealed that would ensure "fair," "timely," and "appropriate" responses.

151. Furthermore, if servicers do have such a process, there is no requirement that homeowners who are denied a HAMP modification be provided written notice of how to access the appeal process.

152. Upon information and belief, the "appeals" at mortgage servicers, if any, are simply ad hoc with little or no criteria.

III. HOMEOWNERS ELIGIBLE FOR RELIEF HAVE LOST THEIR HOMES OR ARE AT RISK OF LOSING THEIR HOMES.

153. The high level of foreclosures in Minnesota have continued, despite HAMP.

154. Every day tens, if not hundreds, of foreclosure Sheriff's Sales occur throughout Minnesota.

155. Foreclosures nationwide were up 32% last April compared to a year ago. An estimated two million people will lose their homes this year.

156. In Minnesota, there were 5,157 foreclosures in the First Quarter of 2009, nearly as high as the *total* number of foreclosures that occurred in all of 2005.

157. Nearly 1,000 public records related to foreclosure Sheriff's Sales have been reviewed pertaining to foreclosures that have occurred in Hennepin and Washington Counties.

158. Due to the securitization of mortgage loans (converting a pool of mortgage loans into bonds, and selling the income streams to a myriad of investors), it is often

difficult to determine the identity of the owner and servicer of the mortgage loans. However, it was clear that a substantial number of these foreclosures were of Minnesotans who were eligible and entitled for benefits through HAMP.

159. Approximately 40% to 60% of the foreclosures in Minnesota were conducted by mortgage loan servicers bound by HAMP requirements.

160. Assuming the rate of foreclosure remains consistent in the Second Quarter, approximately 3,000 people or more have been or will be denied HAMP procedural due process in the same manner as Plaintiffs Nichole Williams and Johnson Sendolo.

161. Indeed, a recent report from the United States Department of the Treasury found that a very small percentage of eligible homeowners are actually receiving a loan modification through HAMP. (Exhibit F).

162. Of the 2.7 million eligible homeowners, only 9% have actually been given a trial loan modification and an even smaller percentage have received a permanent loan modification through HAMP.

163. This report is actually quite conservative, because it only counts individuals who are 60+ days delinquent as "eligible." In fact, an even higher number of homeowners are eligible because they are at-risk of "imminent default."

164. Another report, from the General Accountability Office, concludes that HAMP lacks transparency and accountability. And, that the government does not have the proper resources to ensure that mortgage loan servicers have adequate staffing and comply with the limited procedures that are in place. (Exhibit G).

CLASS ALLEGATIONS

165. Plaintiffs Nichole Williams, Johnson Sendolo, Carey Koppenberg, and Carrie Strohmayer bring this class action on behalf of themselves and, pursuant to Fed. R. Civ. P. 23(b)(2), and all others similarly situated. The Plaintiffs seek certification of the following class:

> Borrowers who are: (a) Minnesota homeowners who have a mortgage loan owned by Fannie Mae or Freddie Mac or that is serviced by a mortgage loan servicer who has volunteered to participate in HAMP, (b) who currently occupy the mortgaged property as their primary residence, and (c) have been or will be denied a loan modification through HAMP without receiving a notice of the reason for the denial or an opportunity to appeal. There are two subclasses:
>
> (1) Borrowers, like Ms. Williams and Ms. Strohmayer with mortgages that are currently in pre-foreclosure proceedings or at-risk of being foreclosed upon, although a sheriff's sale has not yet occurred; and
>
> (2) Borrowers, like Mr. Sendolo and Ms. Koppenberg, whose homes have been sold at a sheriff's sale after March 4, 2009.
>
> The Court, court personnel, employees, and officers of Defendants are expressly excluded from this Class and its subclasses. This class period runs from the applicable statute of limitations as calculated from the date of service of Plaintiffs' Complaint.

166. Numerosity: The members of the class are so numerous that joinder of all members is impractical. Plaintiffs estimate that thousands of Minnesotans are at risk of foreclosure in 2009. There were approximately 5,157 foreclosures that occurred in just Minnesota just in the First Quarter of 2009.

167. According to the Treasury Department, approximately 85% of all homeowners are potentially eligible for HAMP.

168. Commonality: Common questions of law and fact exist as to all members of the class. Among the questions of law or fact to the class are:

i. Whether the Defendants' failure to promulgate regulations, guidelines or rules requiring all servicers of Defendants' mortgage loans or participants in HAMP to provide and, in fact, provide notice through a written decision setting forth the reason for denial of access to HAMP, and showing proper application of the "loss mitigation waterfall" and the formula for the Net Present Value determination is a violation of their rights to procedural due process;

ii. Whether Defendants failure to promulgate regulations, guidelines or rules offering a reasonable opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker prior to any adverse action is a violation of their rights to procedural due process; and

iii. Whether Defendants failure to promulgate regulations, guidelines or rules providing an administrative or legal mechanism to undo a Sheriff's Sale that occurred related to a homeowner who was eligible and qualified for HAMP is a violation of the their rights to procedural due process.

169. Typicality and Adequacy: The claims and defenses of the Plaintiffs are typical of the claims and defenses of the Plaintiff Class and the subclasses they represent. The Plaintiffs and all class members are subject to the same unconstitutional conduct of the Defendants, except the Plaintiffs in subclass (2) will be specifically benefited by relief related to the failure to provide an administrative or legal mechanism to undo a Sheriff's Sale that occurred related to a homeowner who was eligible and qualified for HAMP. Plaintiffs have retained counsel competent and experienced in class action and consumer litigation. Neither the Plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action.

170. The class action is maintainable, pursuant to Fed. R. Civ. P. 23(b)(2) because the Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

171. Subclass (1) is properly certified as a class pursuant to Fed. R. Civ. P 23(c). The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

172. Subclass (2) is properly certified as a class pursuant to Fed. R. Civ. P 23(c). The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

COUNT I:
VIOLATION OF DUE PROCESS
FAILURE TO PROMULGATE RULES REQUIRING
SERVICERS TO PROVIDE NOTICE OF DENIAL

173. Plaintiffs individually and representing subclass 1 and 2, re-allege all prior paragraphs of this Complaint.

174. The Fifth Amendment to the United State Constitution commands the federal government: "No person shall…be deprived of life, liberty, or property, without due process of law…."

175. HAMP is an entitlement program such that its benefits cannot be administered arbitrarily and without procedural due process.

176. Procedural due process requires meaningful notice of a specific reason why a person has been denied.

177. Procedural due process further requires an opportunity to correct mistakes or appeal an adverse decision as well as notice of such an opportunity.

178. Government entities administering entitlement programs such as Defendants are constitutionally obligated to provide program regulations, guidelines, or rules which comport with procedural due process.

179. In violation of the Fifth Amendment, Defendants are required to have promulgated regulations, guidelines or rules that require servicers of Defendants' mortgage loans or participants in the HAMP to provide a written notice stating the reason for denial and showing proper application of the "loss mitigation waterfall" and Net Present Value determination as well as the procedure to appeal an adverse decision.

COUNT II:
VIOLATION OF DUE PROCESS
FAILURE TO PROMULGATE RULES REQUIRING
SERVICERS TO PROVIDE A RIGHT TO APPEAL

180. Plaintiffs individually and representing subclass 1 and 2, re-allege all prior paragraphs of this Complaint.

181. The Fifth Amendment to the United State Constitution commands the federal government: "No person shall…be deprived of life, liberty, or property, without due process of law…."

182. HAMP is an entitlement program such that its benefits cannot be administered arbitrarily and without procedural due process.

183. Procedural due process requires meaningful notice of the specific reason why a person has been denied, and, in order to be meaningful, procedural due process further requires an opportunity to correct mistakes or appeal an adverse decision as well notice of such an opportunity.

184. Government entities administering entitlement programs such as Defendants are constitutionally obligated to provide program regulations, guidelines, or rules which comport with procedural due process.

185. In violation of the Fifth Amendment, Defendants are required to have promulgated regulations that create a uniform process to provide homeowners an unbiased and uniform process to evaluate and reverse adverse decisions related to HAMP

and undo adverse actions, such as a Sheriff's sale, and provide a written decision related to the appeal.

RELIEF

186. For violations of Counts I and II, Plaintiffs Nichole Williams and Carrie Strohmayer individually and for subclass 1 asks this Court to:

A. Declare Defendants conduct is a violation of procedural due process;

B. Enjoin Defendants and their agents, nominees, attorneys, employees, representatives or anyone acting in concert or participation with Defendants from accelerating mortgage payments or the amount due, authorizing a foreclosure or Sheriff's sale, requesting or scheduling a Sheriff's sale, foreclosing, publishing a notice of foreclosure or Sheriff's sale, or filing a lawsuit or initiating a foreclosure sale unless or until:

i. Promulgating regulations, guidelines, or rules that require mortgage loan servicers to notify, in writing, that a homeowner has been denied access to participate in HAMP and other loan modification or loss mitigation programs offered by the servicer;

ii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers provide a written decision stating the reason for denial, and showing proper application of the "loss mitigation waterfall;"

iii. Promulgating regulations, guidelines, or rules that require notice of an opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker;

iv. Promulgating regulations, guidelines, or rules that require the disclosure of the factors and specific formula used to determine a "positive" or "negative" result by the Net Present Value calculator; and

v. Promulgating regulations, guidelines, or rules that provide a reasonable opportunity for a homeowner to appeal to an unbiased decision-maker;

C. Award all costs and attorneys' fees pursuant to 28 U.S.C. § 2412 (2008); and

D. Such other and further relief, including equitable relief, as the Court deemed just and appropriate.

187. For violations of Counts I and II, Plaintiff Johnson Sendolo and Carey Koppenberg individually and for subclass 2 asks this Court to:

A. Declare that Defendants conduct is a violation of procedural due process;

B. Enjoin all Defendants and their agents, nominees, attorneys, employees, representatives or anyone acting in concert or participation with Defendants from liquidating, selling, transferring, repossessing, or in any other way proceeding against or depriving Plaintiffs' of their property unless and until:

i. Defendants identify all Minnesota homeowners who are eligible for HAMP and were foreclosed upon from March 4, 2009 to the present;

ii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers to notify, in writing, that a homeowner has been denied access to participate in HAMP and other loan modification or loss mitigation programs offered by the servicer;

iii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers provide a written decision stating the reason for denial, and showing proper application of the "loss mitigation waterfall;"

iv. Promulgating regulations, guidelines, or rules that require notice of an opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker;

v. Promulgating regulations, guidelines, or rules that require the disclosure of the factors and specific formula used to determine a "positive" or "negative" result by the Net Present Value calculator;

vi. Promulgating regulations, guidelines, or rules that provide a reasonable opportunity for a homeowner to appeal to an unbiased decision-maker; and

vii. Promulgating regulations, guidelines, or rules that create a process for the foreclosure sale or Sheriff's sale to be avoided, the foreclosure lawsuit or foreclosure by action dismissed, and the homeowner's property rights restored if the homeowner is eligible and qualified for HAMP and chooses to avail themselves of HAMP or other loan modification or loss mitigation programs offered by the servicer.

C. All costs and attorneys' fees pursuant to 28 U.S.C. § 2412 (2008); and

D. Such other and further relief, including equitable relief, as the Court deemed just and appropriate.

Dated: August 17, 2009

/s/ Mark Ireland
Mark Ireland (303690)
Jane Bowman (388598)
Timothy Thompson (0109447)

Foreclosure Relief Law Project,
a program of the
Housing Preservation Project
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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Nichole Williams,

Johnson Sendolo,

On behalf of themselves and all others similarly situated,

Plaintiffs.

vs.

Timothy F. Geithner, as United States Secretary of the Treasury

U.S. Department of the Treasury,

The Federal Housing Finance Agency, as conservator for the Federal National Mortgage Association, d/b/a Fannie Mae and the Federal Home Loan Mortgage Corporation d/b/a Freddie Mac,

Federal National Mortgage Association, d/b/a Fannie Mae, and

Federal Home Loan Mortgage Corporation d/b/a Freddie Mac,

Ocwen Loan Servicing, LLC,

GMAC Mortgage, f/d/b/a Homecomings Financial,

Defendants.

JURY TRIAL REQUESTED

Civil: _____

CLASS ACTION COMPLAINT

Ms. Nichole Williams and Mr. Johnson Sendolo, on behalf of themselves and all others similarly situated, allege the following:

INTRODUCTION

1. Plaintiffs Johnson Sendolo and Nichole Williams are the types of people that the federal government's foreclosure prevention program was intended to help. Both had good jobs. Mr. Sendolo was a medical coder for a health insurance company, and Ms. Williams was a legal assistant. But, when the economy faltered, they were both laid off. Eventually, after depleting their savings, they fell behind on their monthly mortgage payments. Now, both have managed to get new jobs and have steady income, but they need a loan modification to get current and make their mortgage loan sustainable. They are eligible for the federal government's Home Affordable Modification Program ("HAMP"), but they have both been denied.

2. Mr. Sendolo applied for the program, and then, without being given any reason or an opportunity to appeal, his application was denied and his house was sold at a Sheriff's Sale. Ms. Williams faxed, emailed, and verbally requested a modification through HAMP with the help of her housing counselor, but Ms. Williams' requests were ignored. Instead, the servicer offered its own non-HAMP three-month payment plan. The temporary plan does not offer any of the advantages of a HAMP modification and foreclosure continues to be eminent.

3. In both cases, Mr. Sendolo and Ms. Williams' constitutional rights to procedural due process have been violated. HAMP is part of a $75 billion government program to prevent foreclosures, approximately six times larger than the National School

Lunch Program. Both the enabling legislation and the federal government's own implementing guidelines make it clear that eligible and qualified homeowners "shall" receive a loan modification, thus creating legal entitlements for thousands of Minnesota homeowners facing foreclosure. Yet, the government has denied Mr. Sendolo, Ms. Williams, and others like them the most fundamental due process protections: notice of the basis for a decision and an opportunity to appeal.

4. HAMP does not require that homeowners are given any notice of a denial at all, and for homeowners, like Mr. Sendolo, the notices that are given do not provide any specific reason for the denial. HAMP is complex, and the lack of transparency prevents Mr. Sendolo and others like him from correcting errors or misinformation. The lack of opportunity to appeal makes it even more difficult to access the benefits. Now that Mr. Sendolo's house has been sold, there is also no formal and uniform method to undo the wrongful foreclosure.

5. Plaintiffs are seeking to enjoin all foreclosures in Minnesota of mortgages owned by Fannie Mae or Freddie Mac, or serviced by one of the mortgage loan servicers who have agreed to administer the HAMP program and provide loan modifications to the homeowners they service.

PARTIES

6. Plaintiff Nichole Williams resides at 9129 Maryland Avenue North, Brooklyn Park, MN 55445 with her two daughters, ages 15 and 20. 9129 Maryland Avenue North is Ms. Williams' primary residence.

7. Plaintiff Johnson Sendolo resides at 3218 Leyland Trail, Woodbury, Minnesota 55125. 3218 Leyland Trail is Mr. Sendolo's primary residence.

8. Defendant Timothy F. Geithner is Secretary of the United States Department of the Treasury, and he has been named as a defendant in this action in his official capacity as Treasury Secretary.

9. Defendant United States Department of Treasury ("Treasury") has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' constitutional rights to procedural due process. Defendant United States Department of Treasury is located at 1500 Pennsylvania Avenue NW, Washington DC 20220.

10. Defendant Federal Housing Finance Agency has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' Constitutional rights to procedural due process, role in creating the policies for HAMP as mandated by statute, and as conservator for Fannie Mae and Freddie Mac. Defendant Federal Housing Finance Agency is located at 1700 G Street, Washington DC 20552. Defendant Federal Housing Finance Agency is the conservator for Federal National Mortgage Association d/b/a Fannie Mae and The Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac ("Federal Housing Finance Agency").

11. Defendant Federal National Mortgage Association d/b/a Fannie Mae ("Fannie Mae") has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' Constitutional rights to procedural due process, authority to issue guidelines and rules related to the HAMP program in

coordination with the Treasury Department, and as fiscal agent for HAMP. Defendant Fannie Mae is located at 3900 Wisconsin Avenue NW, Washington DC 20016.

12. Defendant Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac ("Freddie Mac") has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs' Constitutional rights to procedural due process, authority to issue guidelines and rules related to the HAMP program in coordination with the Treasury Department as statutorily required, and as the entity required to hold mortgage loan servicers accountable for compliance with all HAMP guidelines. Defendant Freddie Mac is located at 8200 Jones Branch Drive, McLean, VA 22102.

13. Defendant Ocwen Loan Servicing has been named as a defendant in this action because it has, in administering HAMP on behalf of and as an agent of the government, violated Plaintiff Johnson Sendolo's procedural due process rights. Ocwen Loan Servicing ("Ocwen") is a Delaware corporation, and has a registered agent in the State of Minnesota at 380 Jackson Str #700, Saint Paul, MN 55101.

14. GMAC Mortgage is the successor in interest to Homecomings Financial, which are both within the GMAC family of companies ("Homecomings"). Homecomings has been named as a Defendant in this action because it has, in administering HAMP on behalf of and as an agent of the government, violated Plaintiff Nichole William's procedural due process rights. Homecomings is a Delaware corporation, and has a registered agent in the State of Minnesota at 380 Jackson Str. #700, Saint Paul, MN 55101.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1331 (2008), because this action arises under the Constitution of the United States of America.

16. Venue is proper pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the State of Minnesota and the properties that are the subject of this action are situated in the State of Minnesota.

FACTS

I. JOHNSON SENDOLO AND NICHOLE WILLIAMS HAVE BEEN WRONGFULLY DENIED ACCESS TO A HAMP LOAN MODIFICATION.

A. Johnson Sendolo's Denial Of A Loan Modification and Sheriff's Sale Was In Violation Of His Due Process Rights.

17. Johnson Sendolo came to the United States in the early 1980s, just as the violence began to escalate in his home country of Liberia.

18. In Liberia, he had worked for the government in the health ministry. Once here, he became a United States citizen and found work in the medical information industry. Specifically, Mr. Sendolo worked as a medical record coder.

19. Eventually, Mr. Sendolo moved to Minnesota with his family, and on September 9, 2005, he purchased his first home in Woodbury, Minnesota.

20. In order to finance the purchase, Mr. Sendolo obtained an 80/20 loan, meaning that he got two loans through Ocwen, which still services both mortgage loans.

21. The first mortgage loan was in the amount of $143,137.

22. The second mortgage was for $35,785.

23. For the first three years, Mr. Sendolo made every loan payment and was careful never to fall behind. Then, in September 2008, Mr. Sendolo lost his job.

24. Nonetheless, he continued making payments, and even called Ocwen and told them about his situation and that he needed help.

25. Eventually his savings ran out, and he stopped making mortgage payments in December 2008.

26. In the meantime, Mr. Sendolo also started working with a mortgage loan counselor at Washington County Housing and Redevelopment Authority, and together they continued to contact Ocwen and seek help.

27. Ocwen is one of the mortgage loan servicers who agreed to provide loan modifications through and administer HAMP on behalf of the government, as well as abide by all of the government's program requirements.

28. At the end of March, Mr. Sendolo submitted paperwork to Ocwen for a HAMP modification of his first mortgage.

29. Mr. Sendolo also submitted paperwork to Ocwen for a modification of his second mortgage.

30. Mr. Sendolo was a good candidate for a loan modification because, at the time, he had income through a new job and continues to have income.

31. Although he did not get paid as much as he had previously, Mr. Sendolo had found a part-time job for about thirty-two hours per pay period. He also received

unemployment income, and Mr. Sendolo's son had moved back home, while attending school, and his son often pays rent.

1. Johnson Sendolo Is Eligible For A Loan Modification Through HAMP.

32. Mr. Sendolo meets all of the eligibility requirements for a loan modification through HAMP. Eligibility for HAMP is determined by five general criteria.[1] First, the home must be the applicants' primary residence. Second, the amount owed on the first mortgage must be equal to or less than $729,750. Third, a homeowner must be "having trouble" paying their mortgage. This means that the homeowner is delinquent (missed two payments) or default is "imminent" due to the nature of the homeowner's hardship and assets. Fourth, the mortgage was originated before January 1, 2009. Fifth, the payment is more than 31% of the homeowner's gross monthly income.

33. In this case, Mr. Sendolo's mortgage relates to his primary residence and the first mortgage is far less than $729,750.

34. Mr. Sendolo is delinquent in the mortgage loan, meaning he owes two or more monthly payments.

35. The mortgage loan was originated before January 1, 2009, and the monthly mortgage payment is more than 31% of his gross income.

36. However, despite satisfying these eligibility criteria, Mr. Sendolo's access to HAMP was denied.

[1] These are the five general criteria, but Fannie Mae and Freddie Mac have identified a few other minor criteria that generally would not apply to most homeowners. For example, in its guidance Fannie Mae prohibits homeowners who have already obtained a modification through HAMP to obtain another one.

2. Mr. Sendolo Was Not Given Adequate Notice Related To His Denial or Opportunity To Appeal The Decision.

37. After waiting over a month, Mr. Sendolo's mortgage loan counselor was e-mailed a boilerplate letter from Ocwen stating that he was denied a HAMP modification. Attached as Exhibit A is a copy of the denial letter, which was sent in a "track changes" format.

38. The letter did not state any reason why Mr. Sendolo had been denied. The letter only provides theoretical examples of reasons for a denial, none of which apply to Mr. Sendolo.

39. This surprised Mr. Sendolo, because Ocwen had already granted a loan modification of his second mortgage, although the modification was not through HAMP.

40. The letter also provided no information related to how Mr. Sendolo could appeal the decision or even if Ocwen had any procedures to handle adverse HAMP decisions.

41. The letter also did not describe any information about other loan modification or loss mitigation programs that were offered through Ocwen.

42. If, for whatever reason, a homeowner is denied a HAMP modification, the government requires that all other loan modification or loss mitigation programs be considered for the homeowner *prior* to initiating foreclosure proceedings.

43. The letter does not provide any indication as to whether such an evaluation ever occurred.

3. Johnson Sendolo's House Was Foreclosed and Sold At A Sheriff's Sale.

44. On June 25, 2009, Mr. Sendolo's home was sold at a Sheriff's Sale to Ocwen. Under Minnesota law, Mr. Sendolo now has six months to "redeem," meaning that he has an opportunity to pay back the full amount of the mortgage loan.

45. If Mr. Sendolo fails to redeem, he must leave the property by the end of December. The whole process has been confusing and stressful.

46. In addition to his adult son, Mr. Sendolo has two children living at home with him. He's not sure exactly what he is going to do, and only wants to stay in his house and make his mortgage work. Mr. Sendolo does not have the money to redeem and he cannot refinance, because the house has lost value. Mr. Sendolo estimates that the total amount of his mortgages is approximately $14,000 more than the house is worth.

47. If Mr. Sendolo and his family are forced out of their house after the end of the redemption period, the eviction will cause him irreparable harm.

B. Nichole William's Denial Of A Loan Modification Was In Violation Of Her Due Process Rights.

48. In 2004, Nichole Williams purchased her first home, and then refinanced the original mortgage loan about a year later.

49. Ms. Williams had wanted to get a 30-year, fixed-rate mortgage loan. But the mortgage broker used a typical "bait and switch" with a lot of pressure.

50. Ms. Williams ended up with an "80/20 loan," meaning that there was a first mortgage loan for 80% of the value and a smaller, second mortgage that was 20% of the value.

51. The first mortgage loan for approximately $232,000 is serviced by Homecomings, a GMAC Company, and the second mortgage loan company is serviced by HSBC.

52. The second mortgage was approximately $58,000.

53. Ms. Williams made payments on the mortgage loans, but on June 20, 2007 she was laid-off and lost her job as a legal assistant.

54. Ms. Williams was unemployed for six months, and she fell behind. Meanwhile, Ms. Williams' child support payments stopped causing further financial hardship.

55. Eventually, Ms. Williams obtained another legal assistant position. She could make some payments, but she was still significantly behind.

56. In July 2008, she sought a loan modification from Homecomings, and a few months later, Ms. Williams received an offer from Homecomings.

57. This began an on-going struggle to obtain a loan modification. On multiple occasions, she was given a "temporary" loan modification of two or three months only to have a permanent modification denied for dubious, if not factually wrong reasons, and then offered another temporary modification. None of these modifications were through HAMP.

1. Nichole Williams Is Eligible For A Loan Modification Through HAMP.

58. After HAMP was announced by Defendants, Ms. Williams worked with her housing counselor to gain access to the government program. Homecomings, a

subsidiary of GMAC, is one of the mortgage loan servicers who agreed to provide loan modifications through and administer HAMP on behalf of the government, as well as abide by all of the government's program requirements.

59. On multiple occasions Ms. Williams specifically asked for a modification under the HAMP program, and stated that she wanted a modification under HAMP.

60. She or her housing counselor made these requests to participate in HAMP by facsimile, e-mail, and verbally over the phone.

61. Ms. Williams is eligible for HAMP, because she meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than $729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent, approximately four monthly payments are past due. Finally, the monthly payments for the mortgage loan are more than 31% of her gross monthly income.

2. Nichole Williams Is Effectively Denied Access To A Loan Modification Through HAMP.

62. Despite Ms. Williams' specific requests, on June 16, 2009, Homecomings did not offer a temporary or permanent loan modification through HAMP. Instead, the offer was just another temporary Homecomings program similar to others that she had been offered.

63. The temporary program offers none of the benefits or sustainability that is a part of a loan modification through HAMP. Specifically, Ms. Williams is to make three

monthly payments of $1,582.21 (more than 31% of her monthly income), and then it is unclear what will happen after the three months.

64. Ms. Williams knows that she does not have enough money to get current on her mortgage loan, and is fearful that at any moment Homecomings will initiate foreclosure proceedings even though she is eligible for HAMP. Once foreclosed, Ms. Williams and her children will be uprooted and it will cause irreparable harm.

B. Congress Acts and the Federal Government Gets The Authority To Create A Foreclosure Prevention and Loan Modification Program.

65. Congress passed the Emergency Economic Stabilization Act of 2008 (the "Act") on October 3, 2008.

66. The purpose of the Act was to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority was used, in part, to "preserve homeownership."

67. In addition to allocating $700 billion to the United States Department of the Treasury, the Act also specifically granted the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program or TARP. 12 U.S.C. §§ 5211, 5225 (2008).

68. In exercising its authority to administer TARP, Congress mandated that the Secretary "shall" take into consideration the "need to help families keep their homes and to stabilize communities." 12 U.S.C. § 5213(3) (2008). To that end, Congress created two specific sections within Title I of the Act related to homeowners. *See Id.*

69. Section 109 is entitled "Foreclosure Mitigation Efforts," and specifically states that the Secretary "shall" implement a plan to "maximize assistance for

homeowners." 12 U.S.C. § 5219(a). These efforts are to be coordinated with other federal agencies including the Federal Housing Finance Agency, which is the conservator for Fannie Mae and Freddie Mac. *Id.*

70. The Act further requires the Secretary to consent to any reasonable loan modification offer:

> [T]he Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitations on modifications.

12 U.S.C. 5219(c).

71. Similarly, Section 110 requires the Federal Housing Finance Agency, as conservator for Fannie Mae and Freddie Mac, to create and implement a plan to prevent foreclosures. Specifically, the Act states:

> [T]he Federal property manager [defined, in part, as the Federal Housing Finance Agency] shall implement a plan that seeks to maximize assistance for homeowners and…minimize foreclosures.

12 U.S.C. § 5220 (b).

72. The statutory tools to be used by Fannie Mae and Freddie Mac include reducing interest rates and reducing the principal balance of mortgage loans.

C. The Creation of the Making Home Affordable Program and HAMP.

73. Pursuant to its legal authority, as granted to it by Congress, both the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the Making Home Affordable program on February 18, 2009.

74. Specifically, the Making Home Affordable program consists of two sub-programs.

75. The first sub-program relates to the creation of refinancing products for individuals with minimal or negative equity in their home, which eventually was entitled the Home Affordable Refinance Program or HARP.

76. The second sub-program relates to the creation and implementation of a uniform loan modification protocol, which eventually was entitled the Home Affordable Modification Program or HAMP.

77. The scope of HAMP is broad; approximately 85 percent of homeowners in the United States are eligible for the program.

78. Homeowners who meet the government's criteria and standards for the program are entitled to a loan modification pursuant to the terms of HAMP.

79. A mortgage loan servicer implementing HAMP does not have discretion to deny a homeowner access to the HAMP program, if the homeowner satisfies the government's criteria for the program.

80. HAMP is funded by the federal government, primarily with TARP funds. The Treasury Department has allocated at least $50 billion of its TARP money to fund the refinance and modification programs and offered an additional $25 billion of non-TARP funds, totaling $75 billion.

81. By statute, the Treasury department, Fannie Mae and Freddie Mac must jointly develop the policies and procedures for the Making Home Affordable Program and HAMP.

82. Fannie Mae is also the fiscal agent of the federal government for HAMP.

83. Freddie Mac is responsible for compliance, meaning auditing mortgage loan servicers for compliance with program rules and protocols.

84. HAMP applies to any mortgage loan owned by Fannie Mae and Freddie Mac, as well as any loans owned by companies that accepted other TARP money or who volunteered to participate in the program.

85. As of the time of filing this action, there are approximately thirty-one servicers who have signed a contract to administer and participate in HAMP in addition to other servicers who manage Fannie Mae and Freddie Mac loans.

86. Ocwen and Homecomings both have voluntarily agreed to administer HAMP and participate in the program.

87. In signing a contract with the Treasury Department, Ocwen and Homecomings agreed to be bound by HAMP requirements and must abide by the framework and protocols for administering the benefits of HAMP.

1. Defendants Create A Framework For The Implementation of HAMP.

88. From March 4, 2009 to present, the Treasury Department, Fannie Mae and Freddie Mac have issued a series of directives for the servicers of mortgage loans and the implementation of HAMP.

89. The directives set forth the framework and protocol to implement HAMP. Notably, Fannie Mae and Freddie Mac both mandate that its servicers participate in

HAMP. Guidelines issued by Fannie Mae, Freddie Mac, or the Treasury Department are also legally binding for program participants.

90. HAMP is always clearly identified as a program of the federal government. For example, an introductory letter to homeowners is often co-branded with the government's Making Home Affordable and servicer logos, and then begins with the following introduction:

> There is help available if you are having difficulty making your mortgage loan payments. ***You may be eligible for the Home Affordable Modification program, part of the initiative announced by President Obama to help homeowners.***

91. HAMP is premised on the idea that getting a homeowner's monthly payment to 31% of the homeowner's gross monthly income will be a sustainable loan modification. *See* U.S. Department of Treasury's Making Home Affordable Summary of Guidelines (March 4, 2009) (attached to the Complaint as Exhibit B).

92. Prior to any foreclosure, the mortgage loan servicers are required to follow three basic steps for all distressed homeowners with the goal of reaching a monthly mortgage payment of 31% of the homeowner's gross monthly income. *See* Fannie Mae, Announcement 09-05R (Exhibit C); Freddie Mac, Single Family Servicer Guide C65.1 (Exhibit D); Treasury Department, Supplemental Directive 09-01 (Exhibit E).

93. The first step is to identify the homeowner's income. Initially the income may be unverified, and then the mortgage loan servicer must create a three-month trial period while it verifies income. Once income is verified, the modification becomes permanent.

94. The second step is to calculate the "target payment," which is 31% of the homeowner's gross monthly income.

95. The third step is to implement the "loss mitigation waterfall."

96. The servicer is required to use each loss mitigation tool within the waterfall, in the correct order, until the servicer reaches the target payment.

97. There are four loss mitigation tools in the waterfall, which must be applied in the following order: (a) capitalizing arrearages, meaning that accrued interest, funds advanced by the servicer, and appropriate foreclosure expenses incurred by the servicer are added to the existing principal balance of the mortgage loan; (b) reducing the interest in increments of .125% until the target payment is reached or the servicer reaches a 2% floor; (c) extending the term of the loan or amortization period by one month increments until the target payment is reached, but the loan schedule cannot exceed 480 months (40 years) from the date of the loan modification; and, finally (d) forbearing a part of the principal balance, meaning that the principal amount of the loan will be reduced in $100 increments until the target payment is reached. The reduction, however, is not forgiven. It is simply a balloon payment that must be paid at the end of the loan term. The principal balance forbearance does not accrue interest or amortize. It is also not included in calculating a monthly payment.

98. Initial eligibility for HAMP is determined by the five general criteria previously described in Paragraphs 32 and 61.

2. The government has no specific notification procedures or disclosure requirements for a homeowner that is denied access to HAMP.

99. There are no requirements that homeowners are told the specific reasons for their denial of a HAMP modification, and, in fact, the government requires no notice at all.

100. In contrast, all HAMP servicers have very specific requirements, instructions, and model letters related to homeowners who are accepted into the program.

101. But, denial is devoid of uniformity and standards.

102. There is no model letter related to a denial of a HAMP modification.

103. There are no requirements to inform a homeowner why they are denied access to the program, or any transparency related to how the loss mitigation waterfall was applied.

104. There is only one sentence in the entire guidance issued by Fannie Mae and the Treasury Department that addresses the topic of denial.

105. In it, both Fannie Mae and the Treasury Department simply encourage servicers to communicate in writing, but such communication is not required and the notice does not need any detail:

> If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HMP after the borrower has submitted a signed Trial Period Plan to the servicer, the servicer should promptly communicate that determination to the borrower in writing…

106. The one sentence in the Fannie Mae and Treasury's guidance also assumes that there was a trial period plan, which there may not be.

107. There is no written guidance or requirements at all related to homeowners who do not sign a Trial Period Plan and are denied access to the program without being given a temporary modification.

108. Similarly, Freddie Mac has a half dozen standard documents or letters to be used for correspondence with homeowners who are eligible and accepted into HAMP.

109. None of these documents relate to what and how a denial of access to HAMP should be communicated with homeowners. Elsewhere in the guide, there are no requirements that homeowners be contacted in writing related to their denial.

110. Indeed, the only other person that is required to be informed in writing of the denial and basis for the denial by the servicer is Freddie Mac.

111. Upon information and belief, even those homeowners who happen to receive notice that they were denied access to HAMP are still denied procedural due process, because the notice does not provide the specific reasons for the denial, the Net Present Value formula and application, or an opportunity to appeal.

3. Fannie Mae and Freddie Mac have no process to appeal an adverse decision or undo a wrongful foreclosure.

112. As alleged above, Defendants have created specific eligibility requirements and procedures that servicers must implement to get the monthly payments of distressed homeowners to the target payment.

113. Defendants have also ordered all Fannie Mae and Freddie Mac mortgage loan servicers and other participating servicers to suspend foreclosure proceedings for all

eligible homeowners until they are determined to be eligible for HAMP or, if not eligible for HAMP, another loss mitigation program offered by the servicer.

114. Specifically, on March 4, 2009, the Treasury Department, Fannie Mae, and Freddie Mac ordered all of its servicers to cease foreclosures until homeowners were evaluated for eligibility for a modification through HAMP.

115. Nonetheless, if a homeowner has been wrongfully foreclosed upon prior to evaluation for eligibility in the program, if the servicer failed to comply with the loss mitigation waterfall, or if the foreclosure was otherwise conducted in violation of the homeowner's procedural due process rights, Defendants have no uniform program or procedure to ensure that the homeowner is able to appeal and that such an appeal will be properly considered and impartially decided.

116. There is also no mandatory process for how an appeal is communicated or triggered, nor is there evaluation criteria that all servicers must use when their decision to deny access to HAMP is appealed that would ensure "fair," "timely," and "appropriate" responses.

117. Furthermore, if servicers do have such a process, there is no requirement that homeowners who are denied a HAMP modification be provided written notice of how to access the appeal process.

118. Upon information and belief, the "appeals" at mortgage servicers, if any, are simply ad hoc with little or no criteria.

III. HOMEOWNERS ELIGIBLE FOR RELIEF HAVE LOST THEIR HOMES OR ARE AT RISK OF LOSING THEIR HOMES.

119. The high level of foreclosures in Minnesota have continued, despite HAMP.

120. Every day tens, if not hundreds, of foreclosure Sheriff's Sales occur throughout Minnesota.

121. Foreclosures nationwide were up 32% last April compared to a year ago. An estimated two million people will lose their homes this year.

122. In Minnesota, there were 5,157 foreclosures in the First Quarter of 2009, nearly as high as the *total* number of foreclosures that occurred in all of 2005.

123. Nearly 1,000 public records related to foreclosure Sheriff's Sales have been reviewed pertaining to foreclosures that have occurred in Hennepin and Washington Counties.

124. Due to the securitization of mortgage loans (converting a pool of mortgage loans into bonds, and selling the income streams to a myriad of investors), it is often difficult to determine the identity of the owner and servicer of the mortgage loans. However, it was clear that a substantial number of these foreclosures were of Minnesotans who were eligible and entitled for benefits through HAMP.

125. Approximately 40% to 60% of the foreclosures in Minnesota were conducted by mortgage loan servicers bound by HAMP requirements.

126. Assuming the rate of foreclosure remains consistent in the Second Quarter, approximately 3,000 people or more have been or will be denied HAMP procedural due process in the same manner as Plaintiffs Nichole Williams and Johnson Sendolo.

CLASS ALLEGATIONS

127. Plaintiffs Nichole Williams and Johnson Sendolo bring this class action on behalf of themselves and, pursuant to Fed. R. Civ. P. 23(b)(2), and all others similarly situated. The Plaintiffs seek certification of the following class:

> Borrowers who are: (a) Minnesota homeowners who have a mortgage loan owned by Fannie Mae or Freddie Mac or that is serviced by a mortgage loan servicer who has volunteered to participate in HAMP, (b) who currently occupy the mortgaged property as their primary residence, and (c) have been or will be denied a loan modification through HAMP without receiving a notice of the reason for the denial or an opportunity to appeal. There are two subclasses:
>
> (1) Borrowers, like Ms. Williams, with mortgages that are currently in pre-foreclosure proceedings or at-risk of being foreclosed upon, although a sheriff's sale has not yet occurred; and
>
> (2) Borrowers, like Mr. Sendolo, whose homes have been sold at a sheriff's sale after March 4, 2009.
>
> The Court, court personnel, employees, and officers of Defendants are expressly excluded from this Class and its subclasses. This class period runs from the applicable statute of limitations as calculated from the date of service of Plaintiffs' Complaint.

128. Numerosity: The members of the class are so numerous that joinder of all members is impractical. Plaintiffs estimate that thousands of Minnesotans are at risk of foreclosure in 2009. There were approximately 5,157 foreclosures that occurred in just Minnesota just in the First Quarter of 2009.

129. According to the Treasury Department, approximately 85% of all homeowners are potentially eligible for HAMP.

130. Commonality: Common questions of law and fact exist as to all members of the class. Among the questions of law or fact to the class are:

i. Whether the Defendants' failure to promulgate regulations, guidelines or rules requiring all servicers of Defendants' mortgage loans or participants in HAMP to provide and, in fact, provide notice through a written decision setting forth the reason for denial of access to HAMP, and showing proper application of the "loss mitigation waterfall" and the formula for the Net Present Value determination is a violation of their rights to procedural due process;

ii. Whether Defendants failure to promulgate regulations, guidelines or rules offering a reasonable opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker prior to any adverse action is a violation of their rights to procedural due process; and

iii. Whether Defendants failure to promulgate regulations, guidelines or rules providing an administrative or legal mechanism to undo a Sheriff's Sale that occurred related to a homeowner who was eligible and qualified for HAMP is a violation of the their rights to procedural due process.

131. Typicality and Adequacy: The claims and defenses of the Plaintiffs are typical of the claims and defenses of the Plaintiff Class and the subclasses they represent. The Plaintiffs and all class members are subject to the same unconstitutional conduct of the Defendants, except the Plaintiffs in subclass (2) will be specifically benefited by relief related to the failure to provide an administrative or legal mechanism to undo a Sheriff's Sale that occurred related to a homeowner who was eligible and qualified for HAMP. Plaintiffs have retained counsel competent and experienced in class action and consumer litigation. Neither the Plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action.

132. The class action is maintainable, pursuant to Fed. R. Civ. P. 23(b)(2) because the Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

133. Subclass (1) is properly certified as a class pursuant to Fed. R. Civ. P 23(c). The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

134. Subclass (2) is properly certified as a class pursuant to Fed. R. Civ. P 23(c). The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

COUNT I:
VIOLATION OF DUE PROCESS
FAILURE TO PROMULGATE RULES REQUIRING
SERVICERS TO PROVIDE NOTICE OF DENIAL

135. Plaintiffs individually and representing subclass 1 and 2, re-allege all prior paragraphs of this Complaint.

136. The Fifth Amendment to the United State Constitution commands the federal government: "No person shall…be deprived of life, liberty, or property, without due process of law…."

137. HAMP is an entitlement program such that its benefits cannot be administered arbitrarily and without procedural due process.

138. Procedural due process requires meaningful notice of a specific reason why a person has been denied.

139. Procedural due process further requires an opportunity to correct mistakes or appeal an adverse decision as well as notice of such an opportunity.

140. Government entities administering entitlement programs such as Defendants are constitutionally obligated to provide program regulations, guidelines, or rules which comport with procedural due process.

141. In violation of the Fifth Amendment, Defendants are required to have promulgated regulations, guidelines or rules that require servicers of Defendants' mortgage loans or participants in the HAMP to provide a written notice stating the reason for denial and showing proper application of the "loss mitigation waterfall" and Net Present Value determination as well as the procedure to appeal an adverse decision.

COUNT II:
VIOLATION OF DUE PROCESS
FAILURE TO PROMULGATE RULES REQUIRING
SERVICERS TO PROVIDE A RIGHT TO APPEAL

142. Plaintiffs individually and representing subclass 1 and 2, re-allege all prior paragraphs of this Complaint.

143. The Fifth Amendment to the United State Constitution commands the federal government: "No person shall…be deprived of life, liberty, or property, without due process of law…."

144. HAMP is an entitlement program such that its benefits cannot be administered arbitrarily and without procedural due process.

145. Procedural due process requires meaningful notice of the specific reason why a person has been denied, and, in order to be meaningful, procedural due process further requires an opportunity to correct mistakes or appeal an adverse decision as well notice of such an opportunity.

146. Government entities administering entitlement programs such as Defendants are constitutionally obligated to provide program regulations, guidelines, or rules which comport with procedural due process.

147. In violation of the Fifth Amendment, Defendants are required to have promulgated regulations that create a uniform process to provide homeowners an unbiased and uniform process to evaluate and reverse adverse decisions related to HAMP

and undo adverse actions, such as a Sheriff's sale, and provide a written decision related to the appeal.

RELIEF

148. For violations of Counts I and II, Plaintiff Nichole Williams individually and for subclass 1 asks this Court to:

A. Declare Defendants conduct is a violation of procedural due process;

B. Enjoin Defendants and their agents, nominees, attorneys, employees, representatives or anyone acting in concert or participation with Defendants from accelerating mortgage payments or the amount due, authorizing a foreclosure or Sheriff's sale, requesting or scheduling a Sheriff's sale, foreclosing, publishing a notice of foreclosure or Sheriff's sale, or filing a lawsuit or initiating a foreclosure sale unless or until:

i. Promulgating regulations, guidelines, or rules that require mortgage loan servicers to notify, in writing, that a homeowner has been denied access to participate in HAMP and other loan modification or loss mitigation programs offered by the servicer;

ii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers provide a written decision stating the reason for denial, and showing proper application of the "loss mitigation waterfall;"

iii. Promulgating regulations, guidelines, or rules that require notice of an opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker;

iv. Promulgating regulations, guidelines, or rules that require the disclosure of the factors and specific formula used to determine a "positive" or "negative" result by the Net Present Value calculator; and

v. Promulgating regulations, guidelines, or rules that provide a reasonable opportunity for a homeowner to appeal to an unbiased decision-maker;

C. Award all costs and attorneys' fees pursuant to 28 U.S.C. § 2412 (2008); and

D. Such other and further relief, including equitable relief, as the Court deemed just and appropriate.

149. For violations of Counts I and II, Plaintiff Johnson Sendolo individually and for subclass 2 asks this Court to:

A. Declare that Defendants conduct is a violation of procedural due process;

B. Enjoin all Defendants and their agents, nominees, attorneys, employees, representatives or anyone acting in concert or participation with Defendants

from liquidating, selling, transferring, repossessing, or in any other way proceeding against or depriving Plaintiffs' of their property unless and until:

i. Defendants identify all Minnesota homeowners who are eligible for HAMP and were foreclosed upon from March 4, 2009 to the present;

ii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers to notify, in writing, that a homeowner has been denied access to participate in HAMP and other loan modification or loss mitigation programs offered by the servicer;

iii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers provide a written decision stating the reason for denial, and showing proper application of the "loss mitigation waterfall;"

iv. Promulgating regulations, guidelines, or rules that require notice of an opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker;

v. Promulgating regulations, guidelines, or rules that require the disclosure of the factors and specific formula used to determine a "positive" or "negative" result by the Net Present Value calculator;

vi. Promulgating regulations, guidelines, or rules that provide a reasonable opportunity for a homeowner to appeal to an unbiased decision-maker; and

vii. Promulgating regulations, guidelines, or rules that create a process for the foreclosure sale or Sheriff's sale to be avoided, the foreclosure lawsuit or foreclosure by action dismissed, and the homeowner's property rights restored if the homeowner is eligible and qualified for HAMP and chooses to avail themselves of HAMP or other loan modification or loss mitigation programs offered by the servicer.

C. All costs and attorneys' fees pursuant to 28 U.S.C. § 2412 (2008); and

D. Such other and further relief, including equitable relief, as the Court deemed just and appropriate.

Dated: July 28, 2009

/s/ Mark Ireland

Mark Ireland (303690)
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Foreclosure Relief Law Project,
a program of the
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ATTORNEYS FOR PLAINTIFFS

OCTOBER 8, 2009: A BUSY HAMP DAY IN D.C.

New HAMP Supplemental Directive 09-07,
The HAMP 500,000 Modification Milestone Announcement,
New Servicer Performance Report, COB 9-30-09

Making Home Affordable Remaining Problems & Solutions:
Rising Foreclosures & The Threat of Negative Equity
Effective, Efficient, Equally Fair, & Transparent ("EEET") Communication Process,
Senior Level Authority - Dedicated Professional-to-Professional Approval Contacts

Neutral Analysis – Part 1

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THE MHA/HAMP PROGRAM STATUS UPDATE

On October 8, 2009, the Treasury and U.S. Department of Housing and Urban Development (HUD) announced (TG-315) a new milestone of more than 500,000 trial loan modifications in progress under the Making Home Affordable (MHA) program under the Home Affordable Modification Program (HAMP), beating the November 2009 deadline. It was reported that 500,000 represents about 40% of those eligible (CNBC 10/8/09). That would leave some 60% of the eligible homeowners not engaged in a HAMP solution to save their homes. However, the Obama Administration's Making Home Affordable (MHA) program (including HAMP and HARP) is slated to **offer assistance to as many as 7 to 9 million homeowners** making a good-faith effort to make their mortgage payments. That goal would result in **4 to 5 million** homeowners with new access to refinancing under the Home Affordable Refinance Program (**HARP**) program, and **3 to 4 million under the HAMP** mortgage modification program. With 500,000 modifications offered under HAMP, 2,500,000 (16.67%) to 3,500,000 (12.5%) remain as a HAMP policy goal, and most of the **4 to 5 million as a HARP** policy goal.

The press release also stated that: Senior Treasury and HUD officials held the next in a series of meetings with servicers this afternoon, with discussion focused on improving servicer ***efficiency and responsiveness to borrowers*** during the modification process. They also released its ***servicer performance report*** through the month of September – ending September 30, 2009.

Also, with little fanfare, the Treasury released its **Supplemental Directive 09-07** which in part moves to standardize the borrower's evaluation forms and process, and requires the Servicer to respond to the borrower within 10 days from receipt of the borrower submission of the required information. It also requires the Servicer to complete its evaluation of borrower eligibility and notify the borrower of its determination within 30 days. If the Servicer determines that the borrower cannot be approved for a trial period plan, the Servicer must send written notice of same, and "consider the borrower for another foreclosure prevention alternative."

Servicer Performance Report, COB 9-30-09

The new Servicer Report indicates that some 2.48 million requests for financial information were sent to borrowers; 757,955 trial period plan offers were extended to borrowers on a cumulative basis, and 487,081 trial and permanent modifications as of September 30, against a **3,100,305** Estimated Eligible 60 Day+ Delinquency. That results in 24.4% (757,955) Trial Plan Offers as a Share of Estimated Eligible 60 Day+ Delinquency and 15.7% or 16% (487,081) Trial Modifications as a Share of Estimated Eligible 60+ Day Delinquencies. This is a big jump in total numbers from the previous report. However, the Trial Modification Tracker: Trial Modifications as a Share of Estimated Eligible 60+ Day Delinquencies indicates **highly non-uniform results.** Saxon leads with 41% along with the other top 6 leaders above 20% ranging from 26%-33%. The 20 other servicers range from 0% to Wells Fargo with 20%. To be fair, some servicers with low percentages are newer to the program. Without speculating as to why some servicers are performing far differently than others, and as to the function of time, it is clear that more uniform results are warranted on program policy grounds alone.

Observation:

Whether its 40% or merely 12.5%-16.67% (or 24%) under HAMP, and most of 4 to 5 million under HARP, there is sufficient evidence that we *must fashion an equally fair, fast, efficient and effective loss mitigation and communication process* to handle the massive defaults, foreclosures, and REO property sales facing society today, tomorrow and in the foreseeable future. It is also obvious that the results are **highly non-uniform** and uniformity of results is critical to reach the maximum potential of the MHA/HAMP program.

The question must be asked and answered: Can we do better? Can the industry, the courts, and the homeowner come together and reach the MHA policy goals in full? The answer is **Yes We Can -but** - it will take a systemic change in the communication processes and systems that we currently use, supported by *objectively obtainable standards* in law and official guidelines. We must consult and serve all diverse and self-conflicting interests in creating a sustainable and fair solution. ***The solution must be an Effective, Efficient, Equally Fair & Transparent ("EEET") Communication Process.***

The Treasury Secretary also warned that **rising foreclosures** may be a source of weakness to the broader economy. The Financial Stability website warns us that:

> The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country. Millions of responsible families who make their monthly payments and fulfill their obligations have seen their property values fall, and are now unable to refinance to lower mortgage rates. Meanwhile, millions of workers have lost their jobs or had their hours cut, and are now struggling to stay current on their mortgage payments. As a result, as many as ***6 million families*** are expected to face foreclosure in the next several years, with millions more struggling to stay

> current on their payments. The present crisis is real, but temporary. As home prices fall, demand for housing will increase, and conditions will ultimately find a new balance. Yet in the absence of decisive action, we risk an intensifying spiral in which lenders foreclose, pushing area home prices still lower, reducing the value of household savings, and making it harder for all families to refinance. In some studies, foreclosure on a home has been found to reduce the prices of nearby homes by as much as 9%.

However, the Center for Responsible Lending (Fact Sheet 9/25/09) states **"13 million projected foreclosures on all types of loans during the next 5 years"** may occur.

Observation:

Whether its *6 million* over 3 years or *13 million* over 5 years, more or less, with substantial court budget shortfalls, the courts and the related foreclosure and bankruptcy systems, will soon face debilitating backlogs not solvable through the current systems and processes.

Although the industry has successfully ramped up its efforts to process HAMP modifications to reach the program's November goal, there remains a huge bottleneck and backlog of loss mitigation evaluations and offers, foreclosures, and new foreclosure mediations, and a highly skewed non-uniformity of results, revealing the painful truth that the present systems do not have the capacity to effectively or efficiently fulfill the MHA/HAMP policy demands of the President and the law, let alone HARP, H4H and NON-HAMP demands. However, with time, the servicers do perform better, but is it enough to reach the goals of the program and the needs of society. New solutions and systems must be coordinated with new laws and state and federal guidelines to enhance the effectiveness and efficiency of these programs or processes. Conflicts in state, local and federal law, and conflicts in official regulations, guidelines and best practices, must be reconciled to avoid compounding inefficiency, confusion, delay, and unnecessary disputes.

HAMP & NON-HAMP LOAN MODIFICATION EFFORTS MUST BE STANDARDIZED, REFINED & SUPER-SIZED

A. Problems:

Inefficiency of process, lack of sufficient capacity, non-uniformity of results, and deficient communication processes must be corrected and reconciled before we can realize *en masse* loss mitigation or optimize the policy goals of President Obama. There is every expectation that the demand for en masse loss mitigation and modification solutions outweigh the actual solutions available, the eligibility parameters of the federal programs, and the capacity of the legacy banks, lenders and servicers to meet the President's (HAMP, HARP and H4H) program goals.

To fashion solutions for non-uniform results and problems in communication and process, a list of the problems must be first enunciated, and then associated with its solution. The problem with identifying a list of problems is the data is not readily available from one source. However, through an unofficial accumulation of complaints, the following list, whether perceived or actual, and without judgment is used as an unofficial survey of problems, complaints, issues or arguments by consumers, consumer groups, HUD-Counselors, and some industry experts:

1. There is an **unequal and unfair bargaining position** between the borrower and the servicer [Borrowers are generally frightened, uninformed, ill prepared and demoralized. Borrowers complain that Servicers are holding all the cards and only disclosing partial information to borrower incrementally from first contact, intake, decisioning, options, etc. For example, how is Net Present Value (NPV), Hardship, or Imminent Default defined from Servicer to Servicer? Is either consistent among the servicers? What form is sent to borrower informing borrower of the criteria for NPV, Hardship, or Imminent Default? On the other hand, Servicers argue that to disclose to borrowers all information upfront would allow borrowers to 'game the system'; borrowers argue that keeping borrowers in the dark acts to create a coercive take-it-or-leave-it bargain that results in wrongful denials and or higher re-defaults because the borrowers true 'ability to pay' is not being addressed, etc.]
2. Servicers are **not sending notices of WHAT documents or information is needed, received or missing** during the process or incrementally; so the borrower is always in the kept-in-the-dark as to his/her pending evaluation status; impeding his/her ability to comply and causing wasteful or unfair treatment. The documents and information the borrower sent may not be the same documents or information the servicer is relying upon to make this life-changing important decision. This may be the case for completely innocent reasons, for reasons that the servicer, misplaced documents, transposed information verbally over the phone, etc. Unless the borrower can see and verify the information, wrongful denials can go undetected.
3. Servicers are **not sending a written notice with an explanation of WHY a borrower was denied** [This is information necessary for the borrower to make an independent determination of whether there was a mistake, numeric transposition, error, wrongful denial or whether to request a correction of an error, reconsideration or to file an appeal [third party computer systems are being developed and or upgraded at this time which have the capabilities to map data to form Check-The-Box letter notices with personal borrower or loan level information. Manually mapping personal data will not be practical.]
4. Servicer representatives are **lacking authority** to effectively assist or approve borrowers; causing delays causing further borrower financial weakness
5. **Servicers complain that borrowers are failing to gather and deliver documents within time deadlines,** necessary to make eligibility determinations; leading to endless open-ended evaluation periods, loss and delay,
6. **Borrowers** claim **Servicers are losing borrower documents** over and over again, requiring borrowers to resend same to different fax numbers and different reps
7. **Servicers are denying borrowers on inaccurate grounds**; based upon lack of response or lack of documentation when in fact borrowers faxed documents and called the servicer numerous times [borrower is then shut out of the system and many are forced to seek an attorney enhancing litigation risks]
8. Servicers are denying modifications or not accepting applications if the borrower is **current or not yet in default** but the Supplemental Directive requires the following:

a. **Supplemental Directive 01-09 states at page 3 states**: "A borrower that is current or less than 60 days delinquent who contacts the servicer for a modification, **appears potentially eligible** for a modification, and **claims a hardship** must be screened **for imminent default**. The servicer must make a determination as to whether a payment default is imminent based on the servicer's standards for imminent default and consistent with applicable contractual agreements and accounting standards. If the servicer determines that default is imminent, the servicer must apply the Net Present Value test."

9. **Servicers are passing borrowers** from one representative to another – all of whom have **no authority** to make decisions
10. Servicers are **demanding payments** before reviewing modification requests
11. **Servicers are initiating foreclosures** before reviewing or completing the modification process [DS News July 28, 2009]
12. Servicers are continuing the foreclosure process during the loss mitigation process or evaluation process; amounting to **economic coercion to accept whatever deal is offered creating a fundamentally unfair bargaining position** (even if borrower believes the deal is not completely within his/her ability to pay); causing emotional distress
13. Some Servicers are **requiring that the borrower contact the foreclosure attorney directly**, and the foreclosure attorney, sale-trustee or 3rd party service are requiring borrower to fill out its forms and submit confidential financial information to it at the same time as the servicer is requiring the borrower to fill out its *different forms* and submit same to the servicer overburdening the borrower with **multiple sets of different financial forms with varying imposed short trigger deadlines**; both acting as debt collectors coached as 'partners' in seeking a loss mitigation/modification solution for the borrower; **conflicts, confusion, overshadowing and FDCPA/FTC issues abound;** fundamental fairness has been lost
14. **The process takes too long**; borrowers are placed on 'hold' and have to repeat the same information over and over again; **foreclosure sale or actual sale is instituted before servicer responds to modification or the refinance application**;
15. Financial, employment, and medical circumstances change during the long delayed process requiring the solution to be varied but **servicer systems are not receptive to changes in circumstances**
16. Servicers are requiring borrowers to verbally commit to income, expense and debt information on the first phone call even if called a verbal estimate; but **denying the borrower based upon deviations** to actual numbers later obtained and delivered by borrower [borrowers don't have all their numbers at that finger tips and do need time to gather same]
17. HUD Certified Counselors and non-profits are necessary and critical for household budget and financial counseling, but they are not set up with the necessary computerization to run program/modification eligibility decisionings or to meet the high volume demand or to resolve high back end debt issues
18. Servicer systems generally do **not recognize the Borrower's Professional Representative** as prepared industry professionals that can enhance the efficiency of the process. They are placed in the general queue with no priority precluding enhancement of the communication process; also servicers continue to ignore the Borrower's Professional Representative's contact and mailing information and generally only send communications or notices to the borrower even after approving written representation authorization. This is generally also the case even when the Borrower's Professional Representative is a licensed attorney acting under written

attorney client authorization. This creates violations of the attorney client rules and causes unnecessary duplication of information, and has the affect of informing the borrower that the servicer is not effectively recognizing the Borrower's Professional Representative.

19. There is a need for **Senior Level Authority - Dedicated Professional-to-Professional Approval Contacts**, for example:

    Dedicated Professional to Professional Approval Contacts - HAMP *Servicers will identify a senior level point of contact to communicate by phone, fax, and e-mail and who is authorized to grant approval of loss mitigation/modification proposals submitted under HAMP by any of (i) a HUD-certified housing counseling representative, (ii) the borrower's licensed attorney or (iii) the borrower's registered real estate broker (each, a "Borrower Third Party Professional Representative"). Servicer will supply "Borrower Third Party Professional Representative" a denial with explanation, approval, or request for more specifically identified information or documents, within 30 days from completed and submitted loss mitigation/modification proposal.*

B. Poor Economic Indicators, Rising Foreclosures & the Threat of Negative Equity

Moreover, serious issues remain in the housing sector, including rising delinquencies, the backlog of foreclosures and insufficient capacity to process loss mitigation "alternatives to foreclosure" solutions, including the implementation of new court mediation or monitor programs. Increases in troubled homeowners, defaults, and foreclosures are likely or probable in part due to:

- unemployment reaching 9.8 percent in September
- bulging consumer debt loads, seriously weakened consumer spending;
- consumer credit falling 12 billion in August [The Federal Reserve reported yesterday that U.S. consumer credit fell in August for a seventh straight month as banks maintained restrictive terms and job losses made households reluctant to borrow] (ABI)
- 1,400,000 bankruptcies expected by end of 2009 [Over 1 Million bankruptcies filed so far in 2009; 124,790 consumer bankruptcies filed in September; By *MortgageDaily.com* Oct. 2, 2009 (ABI)
- over 1 million default notices filed by Q3 alone,
- soft home prices continue with over 33% to 48% or 16 million to 25 million homes under water with negative equity
- the swelling second wave of defaults through resetting Option Arms on Alt-A and Prime borrowers,
- the yet-to-be-processed post moratorium foreclosures,
- a "disturbing" rate of seriously delinquent Freddie Mac and Fannie Mae loans;
- GSE loan losses of some $165 billion over 2 years;
- commercial loan defaults on the rise with strip mall vacancies at a 17 year high, and regional mall vacancies at the highest level on record (of 8 percent) [Diana Olick, CNBC]

Whether it's over 33% to 48%, or 16 million to 25 million homes underwater with negative equity, the issue is serious as it can cause or perpetuate additional or continuing defaults or foreclosures, blight, and price declines. To lower re-default rates and to incentivize the borrower's intent to Stay & Pay, ***greater monthly cash payment reductions*** and ***reduced loan balances*** (or higher hopes for **real equity**) must occur. Limitations in the HAMP eligibility or guidelines will limit the number of successful loan workouts, unless principal reduction or forgiveness methods are employed, or more aggressive NON-HAMP loss mitigation methods are instituted.

Almost half (50%) of U.S. homeowners with a mortgage owe more then their properties are worth. [Deutsche Bank AG, Aug. 5 (Bloomberg)]. The percentage of "underwater" loans may rise to **48 percent**, or **25 million homes**, as prices drop through the first quarter of 2011. The percentage of underwater loans may rise to **90%** in the fastest appreciation states like California, Florida and Nevada. [Karen Weaver, Ying Shen, analysts in New York at Deutsche Bank; Jody Sheen, Bloomberg].

According to the WSJ (Aug. 5, 2009), "Nearly 10% of owner-occupied homes now have mortgage debt with loan-to-value ratios of at least 125%, and roughly half of those homes have mortgage debt with loan-to-value ratios of 150% or more. The rising share of homeowners without equity and the foreclosure crisis continues to be the biggest storm cloud facing any possible economic recovery, says Mark Zandi, chief economist at Moody's Economy.com. "That such a high proportion of homeowners are underwater is testimony to the severity of the foreclosure crisis and the risk that it still poses to the broader economy," he said. To date, most foreclosure-rescue efforts have focused on lowering monthly payments by reducing interest rates, in part because the housing crisis began with mortgages that were resetting to higher payments. But the looming negative-equity problem could put more pressure on policymakers to come up with a modification plan that includes reducing loan balances, and not just lowering interest rates. "The modification plans that they have in place … will become increasingly ineffective as more homeowners fall deeply underwater," says Mr. Zandi. Unsurprisingly, the negative equity issue remains most severe in the sand states. Some 40% of owner-occupied homes in Nevada are underwater, followed by Arizona (37%), California (33%), and Colorado (31%)."

According to the "Summary of Second Quarter 2009 Negative Equity Data from First American CoreLogic, August 13, 2009, nearly one-third of all mortgages are underwater or more than $3 Trillion of property is at risk of default. The report also indicated that "More than 15.2 million U.S. mortgages, or 32.2 percent of all mortgaged properties, were in negative equity position as of June 30, 2009." **By state, the report revealed that California has 2,937,160 in Negative Equity Mortgages (42.0%), and 3,197,670 in Near Negative Equity Mortgages (45.7%).** The report summary also stated that:

> The aggregate property value for loans in a negative equity position was $3.4 trillion, which represents the total property value at risk of default. **In California, the aggregate value of homes that are in negative equity was $969 billion**, followed by Florida ($432 billion), New Jersey ($146 billion), Illinois ($146 billion) and Arizona ($140 billion). **Los Angeles had over $310 billion in**

aggregate property value in a negative equity position, followed by New York ($183 billion), Miami ($152 billion), Washington, DC ($149 billion) and Chicago ($134 billion). (emphasis added)

The top five states' negative equity share was 47 percent, compared to 25 percent for the remaining states. In numerical terms**, California (2.9 million)** and Florida (2.3 million) had the largest number of negative equity mortgages, accounting for 5.2 million or 35 percent of all negative equity loans. Ohio (862,000), Texas (777,000) and Arizona (706,000) were also ranked among the top five states with the highest number of negative equity loans. "Negative equity continues to be the dominant driver of the mortgage market because it leads to foreclosures in the event a borrower experiences some kind of economic shock such as a job loss, illness or other adverse situation. Given that negative equity did not increase this quarter and home prices declines are moderating or flattening, we may be at the peak of the negative equity cycle. However, until negative equity recedes and unemployment declines, mortgage risk will continue to be very elevated," said Mark Fleming, chief economist for First American CoreLogic.

New Court Mediation or Monitor Programs:

New court mediation or monitor programs can play a crucial role in reaching alternatives to foreclosure. The programs must be standardized in order to reach uniformity of results. Additionally, the programs must present an equally fair framework in which all interested parties to the mortgage workout can be represented. The standards set by the programs must be objectively obtainable to avoid unfairness, and unnecessary confusion and disagreements. Intelligent information and document processing as well as loss mitigation decisioning, must be done prior to costly court hearings. This will empower the parties to quickly resolve the vast majority of the cases without expensive and time consuming court intervention. However, the court must supply the fast track forum for matters that fail to resolve itself. Funding for court processing must be supplied by state and federal incentive programs, and by the parties to the mortgage, mediation, or litigation.

Part 2 of this Article will explore the problems and solutions to Court Foreclosure Mediation Programs, and new proposed Court Monitor Programs.

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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

KAREN L. JERMAN,
Plaintiff-Appellant,

v.

CARLISLE, MCNELLIE, RINI, KRAMER & ULRICH LPA; ADRIENNE S. FOSTER,
Defendants-Appellees.

No. 07-3964

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 06-01397—Patricia A. Gaughan, District Judge.

Argued: June 11, 2008

Decided and Filed: August 18, 2008

Before: SILER and COLE, Circuit Judges; CLELAND, District Judge.*

COUNSEL

ARGUED: Stephen R. Felson, LAW OFFICE, Cincinnati, Ohio, for Appellant. George Coakley, REMINGER CO., Cleveland, Ohio, for Appellees. **ON BRIEF:** Stephen R. Felson, LAW OFFICE, Cincinnati, Ohio, Edward A. Icove, ICOVE LEGAL GROUP, Cleveland, Ohio, for Appellant. George Coakley, James O'Connor, REMINGER CO., Cleveland, Ohio, for Appellees.

OPINION

COLE, Circuit Judge. Plaintiff Karen L. Jerman filed an action challenging the debt-collection practices of the law firm Carlisle, McNellie, Rini, Kramer & Ulrich ("Carlisle"), and Adrienne S. Foster, an attorney employed by Carlisle, (collectively, "Defendants"). Jerman claims that Defendants violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692-92p, when they used allegedly deceptive forms to notify her of a foreclosure on her home. More specifically, Jerman claims that Defendants violated the FDCPA by representing to Jerman that her debt would be assumed valid unless she disputed the debt "in writing" even though the FDCPA does not require a *written* dispute. The district court granted Defendants' motion for summary judgment,

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*The Honorable Robert H. Cleland, United States District Judge for the Eastern District of Michigan, sitting by designation.

concluding that, although Defendants violated the FDCPA by instructing Jerman that she must dispute the debt in writing, Defendants qualified for the FDCPA bona fide error defense, 15 U.S.C. § 1692k(c). On appeal, Jerman asserts that the defense is not available. For the following reasons, we affirm.

I. BACKGROUND

On April 17, 2006, Defendants filed a complaint in the Ashtabula County Court of Common Pleas on behalf of their client, Countrywide Home Loans, Inc., the holder of a mortgage interest in real property owned by Jerman. The complaint, handled by Foster, sought foreclosure on that property. Attached to the complaint was a "Notice Under the Fair Debt Collection Practices Act" (hereafter, "Validation Notice") which provided, among other things, that "the debt described herein will be assumed to be valid by the creditor's law firm [Carlisle] unless the debtor(s) . . . within thirty (30) days after receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof." The Validation Notice was dated, included Defendants' contact information, and provided the amount of debt and interest at issue along with the relevant Note and Mortgage. On April 20, 2006, Jerman was served by certified mail with the summons and complaint, which included the Validation Notice attachment. Defendants had no further communication with Jerman.

On April 25, 2006, Defendants received a letter from Edward A. Icove, Jerman's attorney, indicating that Jerman disputed the debt alleged in the complaint. On April 26, 2006, Defendants requested verification of the debt from Countrywide. On May 4, 2006, Countrywide notified Defendants that the note had been paid in full. On May 5, 2006, Defendants sent a judgment entry dismissing the complaint to the court of common pleas for filing, and mailed a copy of the judgment entry to Icove. The judgment entry was filed with the court on May 11, 2006.

On June 7, 2006, Jerman filed a complaint seeking certification as a class action and statutory damages, on the ground that Defendants violated the FDCPA by representing erroneously that a debt will be assumed valid absent a written dispute. Defendants filed a motion to dismiss the complaint on September 22, 2006, arguing that the words "in writing" in the Validation Notice did not violate the FDCPA. The district court denied that motion on November 21, 2006, finding that the Validation Notice violated the FDCPA because it compelled debtors to dispute the debt in writing when the FDCPA imposes no such requirement. *Jerman v. Carlisle*, 464 F. Supp. 2d 720, 725 (N.D. Ohio 2006). After discovery, Defendants moved for summary judgment, arguing that: (1) the foreclosure complaint was not an "initial communication," which is necessary before debtor "validation rights can be triggered" under the FDCPA; (2) Defendants' alleged mistake as to the written-dispute requirement was unintentional and resulted from a bona fide error; and (3) Defendants are absolutely immune from liability because their actions represented an "integral part of the judicial process." The district court granted Defendants' motion on June 20, 2007, concluding that, although the foreclosure complaint was an initial communication triggering rights under the FDCPA and that Defendants violated the FDCPA by instructing Jerman that she must dispute the debt in writing, Defendants were shielded from liability by the bona fide error defense. *Jerman v. Carlisle*, 502 F. Supp. 2d 686, 696 (N.D. Ohio 2006).

Jerman timely filed a notice of appeal on July 19, 2007.

II. ANALYSIS

On appeal, Jerman argues that (1) the district court erred in concluding that the FDCPA's bona fide error defense may apply to mistakes of law,[1] and (2) even if the defense does apply to

[1]Both parties agree that the underlying issue—the written-dispute requirement—rests on a question of law.

mistakes of law, the district court erred in concluding that Defendants were entitled to summary judgment on the defense, because a question of fact remains as to whether Defendants maintained procedures reasonably calculated to avoid the violation.[2] We review de novo a district court's grant of summary judgment. *Miller v. Admin. Office of the Courts*, 448 F.3d 887, 893 (6th Cir. 2006). Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that there are no genuine issues of material fact, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), and the party opposing the motion must then "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

A. Applicability of the FDCPA's Bona Fide Error Defense to Mistakes of Law

A debt collector may avoid liability for an FDCPA violation under the Act's bona fide error defense, which provides:

> A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

15 U.S.C. § 1692k(c). The issue of whether this defense applies to mistakes of law, in addition to procedural or clerical errors, is one of first impression for this Court.

Jerman argues that *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025 (6th Cir. 1992) is instructive. *Smith* recognized that the bona fide error defense protects a debt collector from liability resulting from a clerical error. *Id.* at 1034 (holding that although collection agency's second collection letter, mailed shortly after receiving consumer's cease-communication assist letter, violated the FDCPA, the agency was shielded under the bona fide error defense because its procedures were reasonably adapted to avoid any such error). Thus, *Smith* is not relevant to the instant matter because it indisputably involved a clerical error; moreover, the panel majority did not address whether the bona fide error defense also applies to mistakes of law. *See id.* Although Judge Krupansky, concurring in part and dissenting in part, opined that "the bona fide error defense applies only to clerical errors," *id.* at 1034, his statement is simply dicta and does not serve as precedent.

Further, the district courts in this circuit are split. *Compare Dunaway v. JBC & Assoc, Inc.*, No. 03-73597, 2005 WL 1529574, at *6 (E.D. Mich. June 20, 2005) (citing *Smith* for the erroneous proposition that the Sixth Circuit "has explicitly held" that "the bona fide error defense applies only to clerical errors"), *and Edwards v. McCormick*, 136 F. Supp. 2d 795, 800 (S.D. Ohio 2001) (explaining that "were the mistake an error in legal judgment, it could not be erased by [the bona fide error defense]" and citing *Smith* for the proposition that the defense applies only to clerical errors), *with Miller v. Javitch, Block & Rathbone, LLP*, 534 F. Supp. 2d 772, 777 (S.D. Ohio 2008) (stating that the bona fide error defense "is applicable to mistakes of law as well as clerical errors" and finding defendant shielded by defense for an alleged mistake of law (citing *Delawder v. Platinum Fin. Serv. Corp.*, 443 F. Supp. 2d 942, 952 (S.D. Ohio 2005), which holds that the defense

[2]Jerman also "presents" two other issues on appeal: (1) whether a foreclosure complaint constitutes an "initial communication" under § 1692g(a) of the FDCPA; and, if so, (2) whether the words "in writing" in a validation notice violate § 1692g(a)(3). However, the district court found in favor of Jerman on these issues, and Jerman simply reiterates that the district court "got it right." Defendants did not cross-appeal the rulings on these issues, but address them "in the event the Court is inclined to review [them]." Because neither party is actually appealing these rulings, we do not address them.

applies to debt-collection attorneys who unintentionally violate the FDCPA by asserting in good faith a legal claim that was later rejected by a court)); *Lee v. Javitch, Block & Rathbone, LLP*, No. 1:06-CV-585, 2007 WL 4591961, at *1 (S.D. Ohio Dec. 28, 2007) (noting *Smith*, and circuit split, but explaining that recent and more persuasive case authority has permitted the defense for mistakes of law as well as fact); *Kelly v. Great Seneca*, 443 F. Supp. 2d 954, 960 (S.D. Ohio 2005) ("FDCPA liability is not imposed for good faith mistakes or errors of law or mathematics."); *and Taylor v. Luper, Sheriff & Niedenthal Co., L.P.A.*, 74 F. Supp. 2d 761, 765 (S.D. Ohio 1999) ("There is nothing in the language of [the defense] which limits its application to clerical mistakes or ministerial errors.").

Courts outside of this Circuit are also divided as to whether the bona fide error defense applies to mistakes of law or is limited, as Jerman contends, to procedural or clerical errors. *See Johnson v. Riddle*, 305 F.3d 1107, 1121 n.14 (10th Cir. 2002) (collecting cases). Although the "majority view is that the defense is available for clerical and factual errors" only, "a growing minority of courts . . . have concluded that mistakes of law can be considered bona fide errors under section 1692k(c)." *Nielsen v. Dickerson*, 307 F.3d 623, 641 (7th Cir. 2002) (citations omitted).

The most recent appellate court to speak directly on this subject is the Tenth Circuit in *Johnson v. Riddle*. There, the court listed, and then rejected, the holdings from the Second, Eighth, and Ninth Circuits that the bona fide error defense does not apply to legal errors. *See Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 451 (8th Cir. 2001) (citing *Hulshizer v. Global Credit Servs., Inc.*, 728 F.2d 1037, 1038 (8th Cir. 1984)); *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 27 (2d Cir. 1989); *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 779 (9th Cir. 1982). The court explained that those cases simply "dispense[d] with the issue by citing earlier cases back to the Ninth Circuit's decision in *Baker v. G.C. Services*." *Johnson*, 305 F.3d at 1122. The *Johnson* Court rejected the *Baker* analysis because "*Baker* rested its holding entirely upon the similarity of the FDCPA bona fide error defense to the 'nearly identical' bona fide error defense provided in the Truth in Lending Act ("TILA"), a provision uniformly interpreted to apply only to clerical errors and not to legal errors." *Id.* (citations omitted).[3] The *Johnson* Court found the TILA analogy to be faulty:

> [The plaintiff] also analogizes the provision to a similar section in [the TILA], 15 U.S.C. § 1640(c), which is limited to clerical mistakes and which does not include errors of judgment or law. But . . . the TILA bona fide error provision expressly defined bona fide errors as [including, but not limited to,] "clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error." 15 U.S.C. § 1640(c). The FDCPA provision does no such thing. This, along with the statutes' different purposes, distinguishes the two.

Id. at 1122-23 (quoting *Jenkins v. Heintz*, 124 F.3d 824, 832 n.7 (7th Cir. 1997)). The *Johnson* Court concluded that unlike the TILA, "the plain language of the FDCPA suggests no intent to limit the bona fide error defense to clerical errors. To the contrary, § 1692k(c) refers by its terms to any

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[3] The bona fide error defense in the TILA provides:

> A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. *Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.*

15 U.S.C. § 1640(c) (emphasis added).

'error' that is 'bona fide.'" *Id.* at 1123. The court next looked to legislative history, and found "no indication . . . that Congress intended this broad language to mean anything other than what it says." *Id.* (citing S. Rep. No. 95-382, at 3 ("A debt collector has no liability, however, if he violates the act in *any* manner . . . when such violation is unintentional and occurred despite procedures designed to avoid such violations." (emphasis added))).

The *Johnson* Court found further support in the Supreme Court's reasoning in *Heintz v. Jenkins*, 514 U.S. 291 (1995), which affirmed the Seventh Circuit's conclusion that the FDCPA applies to lawyers acting as debt collectors. We previously decided otherwise, based in part on our view that any other rule "automatically would make liable any litigating lawyer who brought, and then lost, a claim, against a debtor." *Heintz*, 514 U.S. at 295 (citing *Green v. Hocking*, 9 F.3d 18, 21 (6th Cir. 1993)). As the *Johnson* Court explained, the *Heintz* Court agreed with *Green*'s premise, but found such fear insignificant in light of the bona fide error rule. *Id.*

> *Heintz* accepted for argument's sake the Sixth Circuit's view that any debt collection lawyer whose claim fails necessarily violates the FDCPA. However, the Court concluded that such a premise did not produce absurd results, because of the existence of the bona fide error defense rule. In other words, the Court apparently believed that the bona fide error defense would apply in at least a portion of the cases where the lawyer brought suit to collect an amount beyond that legally owed by the debtor. This reasoning at least suggests that the defense is available for mistakes of law, because presumably mistake of law may contribute to the reasons why some of the underlying debt collection procedures are lost.

Johnson, 305 F.3d at 1123. *See also Taylor v. Luper, Sheriff & Niedenthal Co.*, 74 F. Supp. 2d 761, 764 (S.D. Ohio 1999) (noting that, if mistakes of law were not protected by the bona fide error defense, ethical duty of zealous advocacy could require debt collecting lawyer to assert claims that would expose her to FDCPA liability).

After the *Johnson* holding, the Seventh Circuit, in *Nielsen*, 307 F.3d at 641, also rejected *Baker*'s TILA analogy and stated that "the FDCPA's provision does not expressly remove legal mistakes from the realm of errors that can be considered bona fide." The court cited its previous opinion, *Jenkins*, 124 F.3d at 832 n.7, which noted that "nothing in the language of the FDCPA bona fide error provision limits the reach of the defense to clerical errors and other mistakes not involving the exercise of legal judgment," but ultimately concluded that there was no evidence that the mistake at issue had in fact involved the exercise of any legal judgment. Nonetheless, the *Nielson* Court assumed—"consistent with [its] observations in *Jenkins*"—that "a legal mistake can qualify as a bona fide error under the FDCPA," but it found the defense inapplicable because the collector intended to contravene the applicable law of the circuit. *Id.* at 641.

Jerman argues that *Johnson* is incorrect and that the statutory language of the FDCPA supports the view that Congress intended the defense to apply only to clerical errors. Specifically, Jerman points to the last phrase of the defense—that the violation "resulted from a bona fide error notwithstanding the *maintenance of procedures* reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c) (emphasis added). In Jerman's view, "this language eliminates the ability of a debt collector attorney to escape FDCPA liability based upon a legal mistake" because, practically, it makes no sense that a collector can maintain procedures reasonably adapted to avoid mistakes of law.[4] Jerman further argues that the distinction between the language in the FDCPA and the TILA

[4]As a preliminary matter, Defendants argue that we should not consider this argument because Jerman did not raise it in the district court. But Jerman did raise the issue of the bona fide error limitation in the district court. Simply because she states this same argument in a different way and supplies additional authority does not mean we cannot consider such argument. Jerman is not attempting to affect her "chances of victory merely by calculating at which level

is inappropriate because when Congress passed the FDCPA in 1977, the TILA's bona fide statutory language did not provide explicitly the legal error exclusion, but had merely been interpreted as such. In other words, the two acts were then identical. It was not until 1980 that Congress revised the TILA and expressly excluded errors of law from the bona fide error defense. *See* Pub. L. No. 96-221. Therefore, Jerman argues, it is incorrect to compare the current versions of the TILA and the FDCPA: "By using the same language for the FDCPA [when it was enacted] in 1977 after [courts] construed that same language in the TILA to apply to clerical errors only, Congress gave that interpretation the force of the law." The *Johnson* Court considered and rejected this same argument:

> We acknowledge that it is more common to speak of procedures adapted to avoid clerical errors than to speak of procedures adopted to avoid mistakes of law. However, absent a clearer indication that Congress meant to limit the defense to clerical errors, we instead adhere to the unambiguous language of the statute as supported by the available legislative history.

Johnson, 305 F.3d at 1123.

We agree with the persuasive reasoning and analysis set forth in *Johnson*. Indeed, debt collectors may set up "procedures" more often to avoid clerical mistakes, but there is nothing unusual about attorney collectors maintaining procedures, such as frequent education and review of the FDCPA law, in order to avoid mistakes of law. Moreover, the fact that the TILA's bona fide error provision expressly excludes errors of legal judgment while the analogous provision in the FDCPA does not have such limitation suggests that, unlike the TILA, Congress did not intend to limit the defense to clerical errors. Although the FDCPA was adopted when the TILA had identical language that courts had interpreted to exclude legal errors, the legislative history of the FDCPA shows that "a debt collector has no liability . . . if he violates the act in *any* manner . . . when such violation is unintentional and occurred despite procedures designed to avoid such violations." S. Rep. No. 95-382, at 5 (emphasis added). Further, Congress has amended the FDCPA several times since its enactment, and has never changed the language to exclude mistakes of law from the bona fide error defense. In addition, protection for attorneys who make bona fide errors of law is consistent with the FDCPA's purpose of eliminating abusive debt collection practices and ensuring that those debt collectors who refrain from abusive collection practices are not competitively disadvantaged. 15 U.S.C. § 1692(e).

B. Applicability of the FDCPA's Bona Fide Error Defense to Defendants' Mistake of Law

Holding that the FDCPA's bona fide error defense applies to mistakes of law, we now apply the defense to the specific facts of this case. To qualify for the bona fide error defense, a debt collector must prove by a preponderance of the evidence that: (1) the violation was unintentional; (2) the violation was a result of a bona fide error; and (3) the debt collector maintained procedures reasonably adapted to avoid any such error. *See, e.g.*, *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998). In doing so, "[t]he debt collector must only show that the violation was unintentional, not that the communication itself was unintentional." *Id.* On appeal, Jerman argues that there is a genuine issue of material fact regarding the third prong: whether Defendants

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to better pursue [her] theory," nor is she attempting a "second shot" by presenting "back-up theories . . . mounted for the first time." *Estate of Quirk v. CIR*, 928 F.2d 751, 758 (6th Cir. 1991). Jerman is simply advancing additional authority and expanded rationale on appeal to support an argument that she articulated to the district court in the first instance. *See Matter of Walden*, 12 F.3d 445, 451 n.11 (5th Cir. 1994) (as to a statutory argument raised for the first time at oral argument on appeal, "because it is not a separate issue, and instead is simply additional legal authority to consider in reaching our decision, we consider it here").

maintained procedures reasonably adapted to avoid any legal error as to the written-dispute requirement.

The district court found to the contrary. We agree and conclude that Defendants, specifically through Richard McNellie, the senior principal and the attorney responsible for Defendants' compliance with the FDCPA, maintained procedures reasonably adapted to avoid legal error relating to the written-dispute requirement. After reviewing the record, we agree with the district court's conclusion that Defendants employed the following specific procedures to comply with the FDCPA and its "ever-changing" body of law:

> Defendant law firm has designated its senior principal, Richard McNellie, as the individual responsible for compliance with the FDCPA; McNellie regularly attends conferences and seminars that focus on FDCPA issues; the firm subscribes to "Fair Debt Collection," a part of "The Consumer Credit and Legal Practice Series," together with the supplements thereto; McNellie routinely distributes copies of cases relevant to the firm's practices and procedures to all attorneys at the firm; all new employees, attorneys and nonattorneys, are advised of the firm's obligations under the FDCPA and provided with the firm's FDCPA Procedures Manual, and encouraged to seek McNellie's advice with questions regarding the FDCPA; McNellie conducts a mandatory meeting at least twice a year for all available employees wherein FDCPA issues and developments are discussed . . . .

Jerman, 502 F. Supp. 2d at 695.

Jerman argues that Defendants have only shown that these procedures were in place when Jerman was served with the foreclosure complaint and Validation Notice. Jerman claims that the *legal error* took place when the original Validation Notice form was drafted in 1997, and that because Defendants only speak to the procedures in place in 2006 when the *violation* took place, they should lose on summary judgment. Jerman, however, fails to cite any legal authority to support her novel assertion that the court must distinguish between the procedures in place when the "error" (i.e., the drafting of the document) occurred and the procedures in place when the "violation" (i.e., the serving of the faulty document) occurred. In any event, Defendants testified that they relied on case law at the time the Validation Notice was drafted *and* when it was actually sent to Jerman.

Jerman further argues that had Defendants established any meaningful procedures they would have either (1) sought a formal advisory opinion from the Federal Trade Commission on the "in writing" requirement, or (2) adopted the model notice contained in the International Guide to the FDCPA of the American Collector's Association, which does not include the in writing requirement. Jerman's arguments fail. First, if seeking an advisory opinion is the only "meaningful procedure" that can be adopted in order to avoid liability for bona fide legal errors under § 1692k(c), then the FDCPA's *separate* safe-harbor provision for collectors who act upon the advice of the Commission would be superfluous. *See* 15 U.S.C. § 1692k(e).[5] Because "a court should read the statute as a whole and avoid a construction that renders a statutory word superfluous," *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 377 F.3d 592, 596-97 (6th Cir. 2004), Jerman's argument is unpersuasive. Second, while it could be argued that adoption of the model language would be a better practice for Defendants, Jerman provides no support for her assertion that adopting the

[5]15 U.S.C. § 1692k(e) provides:

> No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

language is the only acceptable procedure to avoid legal error of this type. The bona fide error defense calls for maintenance of procedures reasonably adapted to avoid any such bona fide error. Here, Defendants demonstrated that considerable time, effort and research were spent in evaluating the validity of the "in writing" requirement. Defendants' compliance officer regularly attended FDCPA seminars, examined and distributed relevant case law, regularly held meetings, and encouraged open discussion of FDCPA issues. Further, after Defendants sent the Validation Notice, they continued to take reasonable and good faith steps, particularly through the firm's compliance department, to comply with the law. We, therefore, agree with the district court that the bona fide error defense appropriately applies in this case.

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUGUST 14, 2009
THOMAS K. KAHN
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No. 08-16171
Non-Argument Calendar

D. C. Docket No. 08-02202-CV-ODE-1

REGINALD WARREN, SR.,

Plaintiff-Appellant,

versus

COUNTRYWIDE HOME LOANS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(August 14, 2009)

Before TJOFLAT, EDMONDSON and MARCUS, Circuit Judges.

PER CURIAM:

Reginald Warren, proceeding pro se, appeals the dismissal of his civil action against Countrywide Home Loans, Inc. ("Countrywide), in which he alleged violations of Georgia state law and the Fair Debt Collection Practices Act (the

"FDCPA"), 15 U.S.C. § 1692g(b). On appeal, Warren argues that: (1) Countrywide violated the FDCPA by failing to respond to his request for verification of his debt before it proceeded with a foreclosure sale of his home, and by failing to tell the major credit bureaus that he had disputed the debt; (2) Countrywide violated the Federal Trade Commission Act (the "FTCA"), the Fair Credit Reporting Act (the "FCRA"), and the Truth in Lending Act (the "TILA"). After careful review, we affirm.

We review the grant of a motion to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim de novo, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. Glover v. Liggett Group, Inc., 459 F.3d 1304, 1308 (11th Cir. 2006). A pro se complaint should be construed more liberally than formal pleadings drafted by lawyers. Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990). However, our "duty to liberally construe a plaintiff's complaint in the face of a motion to dismiss is not the equivalent of a duty to re-write it for [the plaintiff]." Snow v. DirecTV, Inc., 450 F.3d 1314, 1320 (11th Cir. 2006) (citation omitted).

In addition, issues not briefed on appeal by a pro se litigant are deemed abandoned. Horsley v. Feldt, 304 F.3d 1125, 1131 n.1 (11th Cir. 2002). Even though we read pro se pleadings liberally, a pro se litigant who does not challenge

an issue abandons that issue on appeal. See Irwin v. Hawk, 40 F.3d 347, 347 n.1 (11th Cir. 1994) (holding that a pro se litigant abandoned an issue by not challenging it on appeal). Further, an issue may be deemed abandoned where a party only mentions it in passing, without providing substantive argument in support. See Rowe v. Schreiber, 139 F.3d 1381, 1382 n.1 (11th Cir. 1998) (refusing to reach an issue mentioned in passing in the plaintiff's brief because the issue had no supporting argument or discussion). Finally, we generally will not consider an issue not raised in the district court. Access Now, Inc. v. Southwest Airlines Co., 385 F.3d 1324, 1331 (11th Cir. 2004). This is so because, if we regularly were to address issues not examined by the district court, we would waste resources and deviate from the essential purpose of an appellate court. Id.

As an initial matter, Warren did not argue before the district court that Countrywide violated the FDCPA by failing to notify the major credit bureaus that he had disputed his debt. Likewise, he did not present the district court with his claims that Countrywide violated the FTCA, the FCRA, or the TILA. Accordingly, we decline to address these arguments on appeal. See id.[1]

[1] Moreover, although Warren did vaguely allege violations of "Georgia's Procedural Foreclosure Law" before the district court, he generally failed to offer any allegations pertaining to Georgia law, or even which statutory provisions he was claiming Countrywide violated, before the district court. In fact, the only specific allegation he made regarding Georgia law was that Countrywide had "plaintiff's home listed in the newspaper for sale" -- which is plainly a requirement, and not a violation, of Georgia law. See O.C.G.A. § 44-14-162. The district court therefore did not err in dismissing Warren's Georgia law claims. Snow, 450 F.3d at 1320.

We also reject Warren's apparent argument -- construed loosely from his brief -- that the district court erred by dismissing his claim that Countrywide violated the FDCPA by failing to respond to his request for verification of his debt before it proceeded with a foreclosure sale of his home. Congress enacted the FDCPA to (a) stop debt collectors from using abuse debt collection practices, (b) insure that debt collectors who refrain from such practices are not competitively disadvantaged, and (c) promote consist state action to protect consumers from such practices. 15 U.S.C. § 1692(e). Under the FDCPA, if a consumer notifies a debt collector in writing that a debt is disputed, the collector must cease collection of that debt until the debt collector verifies the debt and mails a copy of the verification to the consumer. Id. § 1692g(b).

The FDCPA defines a "debt collector" as a person who uses an instrumentality of interstate commerce or the mails in a business which has the principal purpose of collecting debts, or who regularly collects debts owed to another. Id. § 1692a(6). Further, for the purpose of 15 U.S.C. § 1692f(6), the term also includes "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of

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Further, while Warren lists several provisions of the Georgia Code that he claims were violated in his appeal brief, we will not consider these claims since he failed to raise them in the district court. Access Now, Inc., 385 F.3d at 1331.

security interests." Id. § 1692a(6). Under § 1692f(6), a debt collector may not take or threaten to take a consumer's property in a nonjudicial action if (a) there is no present right to the property through an enforceable security interest, (b) there is no present intention to take possession of the property, or (c) the property is exempt from being taken. Id. § 1692f(6).

Notably, the FDCPA does not define "debt collection." See id. § 1692a. However, the plain language of the FDCPA supports the district court's conclusion that foreclosing on a security interest is not debt collection activity for purposes of § 1692g. See id. § 1692a(6). Indeed, the statute specifically says that a person in the business of enforcing security interests is a "debt collector" for the purposes of § 1692f(6), which reasonably suggests that such a person is not a debt collector for purposes of the other sections of the Act. See Fla. Right to Life, Inc. v. Lamar, 273 F.3d 1318, 1327 (11th Cir. 2001) (recognizing the interpretive canon of expressio unius est exclusio alterius, which provides that "the expression of one thing implies the exclusion of another") (quotations omitted). Thus, if a person enforcing a security interest is not a debt collector, it likewise is reasonable to conclude that enforcement of a security interest through the foreclosure process is not debt collection for purposes of the Act.

Following this reasoning, several courts have held that "an enforcer of a security interest, such as a [mortgage company] foreclosing on mortgages of real property . . . falls outside the ambit of the FDCPA except for the provisions of section 1692f(6)." Chomilo v. Shapiro, Nordmeyer & Zielke, LLP, No. 06-3103 (RHK/AJB), 2007 WL 2695795, at *3-4 (D. Minn. Sept. 12, 2007); see also Montgomery v. Huntington Bank, 346 F.3d 693, 699-700 (6th Cir. 2003) (finding that enforcer of security interest falls outside of FDCPA provisions); Overton v. Foutty & Foutty, LLP, No. 1:07-CV-0274-DFHTAB, 2007 WL 2413026, at *3-6 (S.D. Ind. August 21, 2007) ("If a person invokes judicial remedies only to enforce the security interest in property, then the effort is not subject to the FDCPA (other than § 1692f(6) and § 1692i(a))."") (emphasis omitted); Trent v. Mortgage Elect. Registration Sys., Inc., No. 3:06-CV-374-J-32HTS, 2007 WL 2120262, at *3-4 (M.D. Fla. July 20, 2007) (applying the analysis of the FDCPA to Florida's counterpart and finding that a mortgage foreclosure action did not qualify as debt collection activity); Beadle v. Haughey, No. Civ. 04-272-SM, 2005 WL 300060, at *3 (D.N.H. February 9, 2005) ("Nearly every court that has addressed the question has held that foreclosing on a mortgage is not debt collection activity for purposes of the FDCPA."). We agree with the conclusions of these courts.

In short, since foreclosing on a home is not debt collection for purposes of § 1692g, Warren did not, and could not, state a claim under that provision based on Countrywide's foreclosure sale of his home. Accordingly, the district court did not err by dismissing this claim, and we affirm.

AFFIRMED.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, THE PEOPLE OF THE STATE OF CALIFORNIA, AND THE STATE OF MISSOURI, Plaintiffs, v. US FORECLOSURE RELIEF CORP.,	Case No. **SACV09-768 JVS(MLGX)** COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

a corporation, also d/b/a U.S. Foreclosure Relief, Inc., Lighthouse Services, and California Foreclosure Specialists,

GEORGE ESCALANTE, individually and as an officer of US FORECLOSURE RELIEF CORP.,

CESAR LOPEZ, individually and also trading and doing business as H.E. Service Company, and

ADRIAN POMERY, ESQ., individually and also trading and doing business as Pomery & Associates,

Defendants.

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission"), the People of the State of California, and the State of Missouri, for their complaint allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

2. The People of the State of California, by and through Edmund G. Brown Jr., Attorney General of the State of California, brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and under the California unfair competition law ("UCL") codified at California Business and Professions Code § 17200 *et seq.*, and false advertising law ("FAL") codified at California Business and Professions Code § 17500 *et seq.*, to obtain injunctive

relief, restitution, civil penalties, and other equitable relief for Defendants' illegal acts or practices.

3. The State of Missouri brings this action, by and through its Attorney General Chris Koster, pursuant to Section 407.100 of the Missouri Merchandising Practices Act, Mo. Rev. Stat. to obtain permanent injunctive relief, restitution, civil penalties and other equitable relief for Defendants' acts and practices in violation of the anti-fraud provisions of the Missouri Merchandising Practices Act, Section 407.020 Mo. Rev. Stat., and for Defendants' acts and practices in violation of the foreclosure consultants provisions of the Missouri Merchandising Practices Act, Sections 407.935 to 407.943, Mo. Rev. Stat.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a) and 6105(b).

5. This Court has supplemental jurisdiction over Plaintiffs People of the State of California and State of Missouri's claims pursuant to 28 U.S.C. § 1367.

6. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b) and 6103(a).

PLAINTIFFS

7. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts and practices.

8. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure

such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

9. The State of California is one of the fifty sovereign states of the United States. The Attorney General is authorized to initiate federal district court proceedings to enjoin telemarketing practices that violate the FTC's Telemarketing Sales Rule, and in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of California, and to obtain such further relief as the Court may deem appropriate. 15 U.S.C. § 6103(a). The Attorney General also brings pendent or supplemental UCL and FAL claims in the name of the People of the State of California to obtain injunctive relief, restitution, civil penalties, and any such further relief as the Court may deem appropriate under pendent or supplemental jurisdiction. 28 U.S.C. § 1367.

10. Plaintiff State of Missouri is one of fifty sovereign states of the United States. The State of Missouri, through its Attorney General, is authorized to initiate proceedings to enjoin violations of the Missouri Merchandising Practices Act and to seek injunctions, restitution, civil penalties and other equitable relief as the Court may deem appropriate. This Court has supplemental jurisdiction over Plaintiff State of Missouri's claims under 28 U.S.C. § 1367.

DEFENDANTS

11. Defendant US Foreclosure Relief Corp. ("US Foreclosure Relief" or "USFR"), also doing business as U.S. Foreclosure Relief, Inc., Lighthouse Services, and California Foreclosure Specialists, is a California corporation with its principal place of business at 1010 West Chapman Avenue, Suite 200, Orange, CA 92868. USFR transacts or has transacted business in this district and throughout the United States.

12. Defendant George Escalante ("Escalante") is the owner and president of US Foreclosure Relief. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had authority to

control, or participated in the acts and practices set forth in this Complaint. Defendant Escalante, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. Defendant Cesar Lopez ("Lopez") is an individual who trades and does business as H.E. Service Company. H.E. Service Company is a sole proprietorship with its principal place of business at 2125 East Katella Avenue, Suite 330, Anaheim, CA 92806. At times material to this Complaint, acting alone or in concert with others, Lopez has formulated, directed, controlled, had authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Lopez, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

14. Defendant Adrian Pomery, Esq. ("Pomery") is an individual who trades and does business as Pomery & Associates. Pomery & Associates is a sole proprietorship with its principal place of business at 2050 West Chapman Avenue, Suite 221, Orange, CA 92868. At times material to this Complaint, acting alone or in concert with others, Pomery has formulated, directed, controlled, had authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Pomery, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

15. Since at least Spring 2008 until at least November 2008, acting alone or in concert with others, US Foreclosure Relief advertised, marketed, offered for sale, or sold loan modification and foreclosure rescue services to consumers throughout the United States. In or around December 2008, H.E. Service Company and Pomery & Associates took over the operation of US Foreclosure Relief and since that time have advertised, marketed, offered for sale, or sold loan modification and foreclosure rescue services to US Foreclosure Relief clients. Since that time, H.E. Service Company and Pomery & Associates, acting alone or in concert with others, also advertised, marketed, offered for sale, or sold those

same services to other consumers throughout the United States.

COMMERCE

16. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

AVAILABILITY OF FREE LOAN MODIFICATION AND FORECLOSURE RELIEF SERVICES

17. Numerous mortgage lenders and servicers have instituted free programs to assist financially distressed homeowners by offering them the opportunity to modify loans that have become unaffordable. Many of these "loan modification" programs have expanded dramatically as lenders have increased participation in the President's "Making Home Affordable" plan. Moreover, numerous major mortgage lenders and servicers, non-profit and community-based organizations, the federal government, and the news media have helped publicize the availability of these free mortgage loan modification programs. Lenders often notify consumers of the availability of these programs, or of consumers' eligibility, through their "loss mitigation" departments. Proposed defendants divert consumers from these free programs and induce them to spend thousands of dollars on their purported "Loss Mitigation Services."

DEFENDANTS' BUSINESS PRACTICES

18. Defendants have advertised, marketed, offered for sale, and sold purported home loan modification and foreclosure rescue services. Defendants market their services to homeowners who are in financial distress and searching for a loan modification.

19. At various times since Summer 2008, Defendants have made outbound telemarketing calls to consumers, including to consumers on the National Do Not Call Registry.

20. At various times since Spring 2008, Defendants have advertised their

loan modification services on various Internet websites, including www.cafspecialists.com, www.stopforeclosuretogether.com, www.pomerylaw.com, and www.homelegalassistance.com.

21. The www.cafspecialists.com website has contained, among other things, the following statements:

a. US Foreclosure Relief prides itself on upholding the highest standards of business ethics and competitive greatness. US Foreclosure Relief provides homeowners with peace of mind: knowing that they have taken a proactive approach to control their destiny.

b. **Proven Track Record**

US Foreclosure Relief has created a proven track record in creating successful coalitions with homeowners and lenders. We have proven time and time again our ability to get the job done - and do it well.

(Exhibit A)

22. The www.pomerylaw.com website has contained, among other things, the following statements:

a. Losing your Home to Foreclosure? You have options, We can help!

b. Pomery & Associates saves homes. Just call us and we can help you stay in your home at a payment you can afford.

(Exhibit B)

23. The www.homelegalassistance.com website has featured a seal with a legal scale inside it and has contained, among other things, the following statements:

a. HOMEOWNERS LEGAL ASSISTANCE - Loan Modification Services

b. Now is the perfect opportunity to negotiate a livable mortgage rate, have your loan modified and stop foreclosure on your dream home. Take advantage of the government bailout money given to YOUR lender to help YOU. Act now before it's too late!

c. Regardless of your current mortgage situation, Homeowners Legal Assistance will strive to negotiate a reasonable mortgage loan.

d. **At Homeowners Legal Assistance**, our mission and priority is to provide homeowners in every city across America with an ethical, affordable, and effective loss mitigation program to avoid Foreclosures. Our vision is inspired by creating the largest and most reputable loss mitigation law firm in the country by providing client resolution and superior customer service.

e. You will find that the skill, professionalism, and consideration we offer each client is a truly stress relieving and positive experience for you and your loved ones.

f. Our goal is to help you save your home!

g. We pressure your bank to pay attention to your needs because they know and trust us. We negotiate a significant number of cases each month and use that leverage when negotiating cases. We have brought together a knowledgeable team from loss mitigation, collections, real estate and banking industries to offer the most complete negotiation program available.

h. We have rescued homeowners from foreclosure, adjustable mortgages, and lack of equity. Our proven track record gives us credibility with your lender, and our significant volume of

cases gives us leverage when negotiating. Homeowners Legal Assistance is the right law firm to help you through this difficult time.

(Exhibit C)

24. At various times since Spring 2008, Defendants have advertised through radio advertisements, including but not limited to Exhibit D. That radio advertisement contains the following statements:

a. Homeowners Legal Assistance would like to offer you a free, no obligation consultation that will show you how to stop foreclosure, reduce your interest rates, and save thousands on your mortgage. Do not let this economic slowdown take your home from you and your family.

b. Homeowners Legal Assistance is an attorney-based loan modification firm that can negotiate the terms of your mortgage so you can afford to live in and enjoy your home.

c. It does not matter how far behind you are on payment or what your credit score is. Homeowners Legal Assistance is here to listen and help.

(Exhibit D)

25. Consumers have contacted Defendants by calling toll-free numbers provided in the Defendants' radio advertisements and on their websites and have spoken to Defendants' representatives.

26. In numerous instances, during inbound and outbound telephone calls, Defendants' representatives state to consumers that Defendants will stop any foreclosure or sale date on the consumer's property, substantially lower the interest rate on the consumer's home loan, change the interest rate on the consumer's home loan from an adjustable rate to a fixed rate, substantially reduce the principal amount of the consumer's home loan, negotiate any late payments or fees, and

substantially lower the consumer's monthly home loan payment.

27. In numerous instances, during inbound and outbound telephone calls, Defendants' representatives tell consumers that Defendants have a success rate of 85 percent or greater, and that Defendants can obtain a loan modification for consumers within a specified period of time, often no more than two months.

28. In numerous instances, during inbound and outbound telephone calls, Defendants' representatives tell consumers that, if they are not satisfied with the company's service, they are entitled to a refund of the fees paid, minus a processing fee.

29. In numerous instances, during inbound and outbound telephone calls, Defendants' representatives advise consumers not to contact their lenders or answer inquires from their lenders. Defendants' representatives also tell some consumers to stop paying their home loan while Defendants allegedly negotiate with the consumers' lenders.

30. In numerous instances, Defendants require consumers to pay an advance fee, typically $1,800 to $2,350, before Defendants render any service.

31. In numerous instances, Defendants fail to obtain the promised home loan modifications that would make the consumers' loans more affordable.

VIOLATIONS OF THE FTC ACT

32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

33. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

False Loan Modification Claim

(By Plaintiff Federal Trade Commission)

34. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of loan modification or foreclosure rescue

services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will obtain for consumers home loan modifications that will make their loans substantially more affordable.

35. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 34 of this Complaint, Defendants failed to obtain for consumers home loan modifications that made their loans substantially more affordable.

36. Therefore, Defendants' representation as set forth in Paragraph 34 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

False or Unsubstantiated Success Claims

(By Plaintiff Federal Trade Commission)

37. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants have helped at least 85 percent of their clients obtain a home loan modification.

38. The representation set forth in Paragraph 37 of this Complaint is false or was not substantiated at the time the representation was made.

39. Therefore, Defendants' representation as set forth in Paragraph 37 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

THE TELEMARKETING SALES RULE AND THE NATIONAL DO NOT CALL REGISTRY

40. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15

U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.

41. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2, as amended.

42. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

43. The TSR prohibits sellers and telemarketers from making any false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

44. Among other things, the TSR established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *donotcall.gov*.

45. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at *donotcall.gov*, or by otherwise contacting law enforcement authorities.

46. Since September 2, 2003, the FTC has allowed sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at *telemarketing.donotcall.gov*, pay the required fees, and download the registered numbers by area code.

47. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

48. Since October 17, 2003, sellers and telemarketers generally have been prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the Registry. 16 C.F.R. § 310.8(a) and (b). There is no charge for the first five area codes of data. Further, sellers or telemarketers accessing the Registry may not participate in any arrangement to share the cost of accessing the Registry, including an arrangement where one seller pays a fee and accesses the Registry for other sellers, the other sellers do not pay fees to the Registry, and the cost of accessing the Registry is thereby divided among the various sellers. 16 C.F.R. § 310.8(c).

49. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c) and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

50. Pursuant to Section 6103(a) of the TSR, 15 U.S.C. § 6103(a), an attorney general of any state is authorized to initiate a civil action in this Court to enjoin a pattern or practice of violating the TSR and to obtain damages, restitution, and other compensation on behalf of residents of that state, and to obtain such further and other relief as the Court may deem appropriate.

COUNT III

Making False or Misleading Statements

(By Plaintiff Federal Trade Commission)

51. In numerous instances, in connection with the telemarketing of loan modification or foreclosure rescue services, and to induce the purchase of loan modification or foreclosure rescue services, Defendants have made false or

misleading representations that:

a. Defendants will obtain for consumers home loan modifications that will make their loans substantially more affordable; and

b. Defendants have helped at least 85 percent of their clients obtain a home loan modification.

52. Defendants' acts or practices, as alleged in Paragraph 51 of this Complaint, violate Sections 310.3(a)(2)(iii) and (a)(4) of the TSR, 16 C.F.R. § 310.2(a)(2)(iii) and (a)(4).

COUNT IV

Violations of the National Do Not Call Registry

(By Plaintiffs Federal Trade Commission and People of the State of California)

53. In numerous instances, in connection with the telemarketing of loan modification or foreclosure rescue services, Defendants have engaged in or caused others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT V

Failure to Pay National Registry Fees

(By Plaintiffs Federal Trade Commission and People of the State of California)

54. In numerous instances, in connection with the telemarketing of loan modification or foreclosure rescue services, Defendants have initiated or caused others to initiate an outbound telephone call to a telephone number within a given area code without the seller first paying, either directly or through another person, the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CALIFORNIA LAW REGARDING ADVANCE FEES FOR FORECLOSURE CONSULTING

55. California Civil Code § 2945, *et seq.*, regulates the activities of mortgage foreclosure consultants in California. The purpose of the law is to safeguard the public against deceit and to encourage fair dealing in the rendition of foreclosure services.

56. California Civil Code § 2945.1, subdivision (a) defines a foreclosure consultant as:

> "[A]ny person who makes any solicitation, representation, or offer to any [home] owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:
>
> (1) Stop or postpone the foreclosure sale.
>
> (2) Obtain any forbearance from any beneficiary or mortgage.
>
> (3) Assist the owner to exercise the right of reinstatement provided in [Civil Code] Section 2924c.
>
> (4) Obtain any extension of the period within which the owner may reinstate his or her obligation.
>
> (5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in any such deed of trust or mortgage.
>
> (6) Assist the owner to obtain a loan or advance of funds.
>
> (7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.
>
> (8) Save the owner's residence from foreclosure."

57. Defendants operate as foreclosure consultants as that term is defined

in subdivision (a) of section 2945.1 of the California Civil Code.

58. California Civil Code Section 2945.4 forbids foreclosure consultants from collecting advance fees for loan modification or other foreclosure rescue services after a notice of default is recorded against the property. Attorneys performing legal services in the course of representing clients may charge clients up-front retainer fees. However, this exemption does not apply if an attorney is not, in fact, rendering legal services but is merely acting as a "front" for non-attorney foreclosure consultants in an attempt to avoid compliance with Civil Code § 2945.4.

VIOLATIONS OF CALIFORNIA LAW

COUNT VI

Violations of Business and Professions Code § 17500 (Untrue or Misleading Statements)

(By Plaintiff People of the State of California)

59. Defendants have violated and continue to violate Business and Professions Code § 17500 by making or disseminating untrue or misleading statements, or causing untrue or misleading statements to be made or disseminated in or from California, with the intent to induce members of the public to pay valuable consideration for Defendants' mortgage loan modification or stop foreclosure services. The untrue or misleading statements include but are not necessarily limited to the following:

a. In numerous instances, Defendants have represented, expressly or by implication, that Defendants will obtain for consumers home loan modifications that will make their loans substantially more affordable. In fact, in numerous instances, Defendants failed to obtain for consumers home loan modifications that made their loans substantially more affordable.

b. In numerous instances, Defendants have represented to

consumers that they must make further payments to Defendants even though Defendants have not obtained mortgage loan modification or stopped foreclosure.

c. In numerous instances, Defendants have represented to consumers they have a high success rate and that they can obtain loan modification for consumers within a specified period of time, typically no more than two months. In fact, Defendants do not have a high success rate nor do they obtain loan modifications within the specified period of time.

d. In numerous instances, Defendants have represented to consumers that consumers should not contact their lender or answer queries from their lender even though such advice could and has resulted in causing some consumers to fall behind in their loan payments, causing their lenders to initiate foreclosure proceedings, and/or causing damage to consumers' credit record.

60. Defendants knew or by the exercise of reasonable care should have known that the statements set forth above were untrue or misleading at the time the statements were made.

COUNT VII

Violations of Business and Professions Code § 17200 (Unfair Competition)

(By Plaintiff People of the State of California)

61. Defendants have engaged in and continue to engage in unfair competition as defined in Business and Professions Code § 17200 as set forth in this paragraph:

a. In numerous instances, Defendants have represented, expressly or by implication, that Defendants will obtain for consumers

home loan modifications that will make their loans substantially more affordable. In fact, in numerous instances, Defendants failed to obtain for consumers home loan modifications that made their loans substantially more affordable.

b. In numerous instances, Defendants have made or disseminated untrue or misleading statements, or caused untrue or misleading statements to be made or disseminated in or from California, with the intent to induce members of the public to pay valuable consideration for Defendants' mortgage loan modification or stop foreclosure services in violation of Business and Professions Code § 17500 as alleged above in Count VI.

c. In numerous instances, Defendants claimed, demanded, charged, collected, and/or received compensation prior to performing fully each service Defendants contracted to perform or represented that they would perform in violation of California Civil Code § 2945.4(a).

d. In numerous instances, in connection with telemarketing, Defendants engaged in or caused others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

e. In numerous instances, in connection with telemarketing, Defendants have initiated or caused others to initiate an outbound telephone call to a telephone number within a given area code without the seller first paying, either directly or through another person, the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16

C.F.R. § 310.8.

f. In numerous instances, Defendants' contracts have not complied with the requirements for mortgage foreclosure consultants set forth in Civil Code § 2945 *et seq*. Defendants' violations include, but are not limited to, the failure to include in their written contracts the notice required by Civil Code § 2945.3. Such notice must state that Defendants may not take any money from a consumer or ask a consumer for money until they have completely finished doing everything Defendants said they would do under the contract.

MISSOURI LAW REGARDING ADVANCE FEES FOR FORECLOSURE CONSULTING

62. Sections 407.935 to 407.943 of the Missouri Merchandising Practices Act regulate the activities of foreclosure consultants in Missouri.

63. Section 407.935 of the Missouri Merchandising Practices Act, subdivision (a) defines a foreclosure consultant as:

"[A]ny person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will do in any manner any of the following:

a. Stop or postpone the foreclosure sale;

b. Obtain any forbearance from any beneficiary or mortgagee;

c. Assist the owner to exercise any right of redemption;

d. Obtain any extension of the period within which the owner may reinstate his obligation;

e. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in any such deed of trust or

mortgage;

f. Assist the owner in obtaining a loan or advance of funds;

g. Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;

h. Save the owner's residence from foreclosure."

64. Defendants operate as foreclosure consultants as that term is defined in subdivision (a) of section 407.935 of the Missouri Merchandising Practices Act.

65. Section 407.938 of the Missouri Merchandising Practices Act requires foreclosure consultants, in a form required by Missouri law, to include in their written contracts a notice that advises the consumer that a foreclosure consultant cannot take or request any money until he or she has completely finished doing everything he or she said they would do and also requires a three day notice of cancellation.

66. Section 407.940 of the Missouri Merchandising Practices Act forbids foreclosure consultants from knowingly claiming, demanding, charging, collecting or receiving any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he would perform. Attorneys, licensed in the State of Missouri, rendering service in the course of their legal practice are exempt from this rule. However, this exemption does not apply if an attorney is not licensed in Missouri or if the attorney is not rendering legal services, but is merely acting as a "front" for non-attorney foreclosure consultants in an attempt to avoid compliance with section 407.940.

MISSOURI LAW RELATING TO UNLAWFUL MERCHANDISING PRACTICES

67. Section 407.020 of the Missouri Merchandising Practices Act provides that the act, use or employment by any person of any deception, fraud,

false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce is declared to be an unlawful practice.

68. Any act, use or employment declared unlawful by Section 407.020 violates that subsection whether committed before, during or after the sale, advertisement or solicitation.

69. Section 407.010.4 defines "merchandise" as any objects, wares, goods, commodities, intangibles, real estate or services.

70. Defendants have sold merchandise in the State of Missouri as that term is defined in subdivision (4) of Section 407.010 of the Missouri Merchandising Practices Act.

VIOLATIONS OF MISSOURI LAW

COUNT VIII

Violations of Missouri Merchandising Practices Act § 407.938 and § 407.940

(Foreclosure Consulting)

(By Plaintiff State of Missouri)

71. Defendants have engaged in and continue to engage in practices which violate the foreclosure consultant provisions of the Missouri Merchandising Practices Act. These violations include but are not limited to the following:

a. Claiming, demanding, charging, collecting and receiving compensation from Missouri consumers prior to performing each and every service that Defendants contracted to perform or represented they would perform in violation of § 407.940.

b. Failing to include in their written contracts with Missouri consumers the written notice required by § 407.938 advising consumers that foreclosure consultants are prohibited from asking for or receiving payment prior to completely finishing

doing everything he or she said he or she would do.

c. Failing to include in their written contracts with Missouri consumers the notice of cancellation in the form required by § 407.938.

COUNT IX

Violations of Missouri Merchandising Practices Act § 407.020

(Misrepresentations in connection with advertisement or sale of merchandise)

(By Plaintiff State of Missouri)

72. Defendants have violated and continue to violate Missouri Merchandising Practices Act § 407.020 by making misrepresentations in the State of Missouri to Missouri consumers to induce those consumers to pay valuable consideration for Defendants' mortgage loan modification services or stop foreclosure services. The misrepresentations include but are not limited to the following:

a. Defendants have represented, expressly or by implication that Defendants will obtain for consumers home loan modifications that will make their loans substantially more affordable. In fact, in numerous instances, Defendants failed to obtain for consumers home loan modifications that made their loans substantially more affordable.

b. Defendants have represented to consumers that they must make further payments to Defendants even though Defendants have not obtained mortgage loan modifications or stopped foreclosure.

c. Defendants have represented to consumers that consumers should not contact their lender or answer queries from their lender even though such advice could and has resulted in causing some consumers to fall behind in their loan payments

and/or causing their lenders to initiate foreclosure proceedings, and/or causing damage to consumers' credit record.

73. Defendants knew or by the exercise of reasonable care should have known that the statements set forth above were untrue or misleading at the time the statements were made.

CONSUMER INJURY

74. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' unlawful acts or practices. In some instances, consumers lost their homes to foreclosure because Defendants failed to obtain the promised home loan modification that would have lowered consumers' payments. Even consumers who did not lose their homes ended up even further behind in their payments, suffered harm to their credit reports, and suffered other harms because of Defendants' failure to obtain the promised loan modifications and because Defendants advised consumers not to pay their home loans while Defendants allegedly negotiated their loan modifications.

75. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief from this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

76. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy injury caused by Defendants' law violations.

77. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as

the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the TSR, including the rescission and reformation of contracts and the refund of money.

78. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes the Court to grant the State of California, on behalf of its residents, injunctive and other equitable relief, including damages, restitution, other compensation, and such further and other relief as the Court deems appropriate.

79. The counts based upon state law may be enforced by this Court through its pendent or supplemental jurisdiction pursuant to 28 U.S.C. § 1367, and this Court may award relief under California Civil Code § 2945, California Business and Professions Code §§ 17200 and 17500, and the Missouri Merchandising Practices Act § 407.100.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, pursuant to Section 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b; Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b); Section 49(a) of the Telemarketing Act, 15 U.S.C. § 6103(a); California Business and Professions Code § 17200 *et seq.*, and § 17500 *et seq.*; Missouri Merchandising Practices Act § 407.100; and the Court's own equitable powers, request that the Court:

A. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to temporary and preliminary injunctions, an order freezing assets, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Enter a permanent injunction to prevent future violations of the California Business and Professions Code by Defendants;

D. Enter a permanent injunction to prevent future violations of the Missouri Merchandising Practices Act by Defendants;

E. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the TSR, the California Business and Professions Code, and the Missouri Merchandising Practices Act, including, but not limited to, civil penalties, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

F. Award Plaintiffs the costs of bringing this action, including costs of investigation, as well as such other and additional equitable relief as the Court may determine to be just and proper.

Dated: July 7, 2009

Respectfully Submitted,

WILLARD K. TOM
General Counsel

[redacted]

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US Foreclosure Relief

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About US Foreclosure Relief

A Proactive Approach to Today's Challenging Market

Homeowners represented by US Foreclosure Relief initiate our services for a variety of reasons, including time constraints, our lender relationships, their limited knowledge of the foreclosure process, language barriers, etc. Finding the right company to work with your situation can be an even more daunting task and homeowners can easily become overwhelmed. US Foreclosure Relief prides itself on upholding the highest standards of business ethics and competitive greatness. US Foreclosure Relief provides homeowners with peace of mind: knowing they have taken a proactive approach to control their destiny.

Proven Track Record

US Foreclosure Relief has created a proven track record in creating successful coalitions with homeowners and lenders. We have proven time and time again our ability to get the job done – and do it well.

Take the initiative to be in control of your destiny by calling us today at (888) 773-2677 for a free, personalized consultation. You can also apply online. It is fast, secure, and easy.

Why wait? Let us go to work for you!

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Pomery & Associates

Losing your Home to Foreclosure? You have options, We can help!

Contact Us!

Why Loan Modification?

Loan Modification- Means your current lender modifies your current mortgage through what is called the note. The note sets the terms of your loan. This does not require a new closing. This is not refinancing your loan. A loan modification will simply change any or all of the following terms of your loan. The terms of your loan are your interest rate, balance of loan, delinquent fees owed, and term of loan. In the past this was only used when a borrower was delinquent but now we will see it being used before someone is delinquent. This is one of the best methods to help people avoid foreclosure. The bank does not want you to lose your home. Pomery & Associates saves homes. Just call us and we can help you stay in your home at a payment you can afford.

Definition:
Loss mitigation is a process that helps stop a home from going through foreclosure. It is an effort made by the federal government and the mortgage industry to help home owners that were facing the loss of their homes find an alternative to foreclosure.

Consequences of Loss Mitigation:
A loss mitigation department can make a difference between the success and failure of your loss mitigation transaction. Although the main focus is the keep a home owner from losing their home, loss mitigation has options such as setting up a repayment plan or loan modification plan. These options need to be considered realistically in regards to the home owner's ability to repay the delinquent amount.

What a Lawyer can do for you:

Loss Mitigation lawyers can help you save your home. Loss mitigation lawyers can help you bring your mortgage up to date and find out what the

Complaint Exhibit B

best options are to help you get there. As real property lawyers, they understand the mortgage industry and could help you find a solution you can work with. Lawyers can also introduce you to programs that will help you pay off the amount you owe to the bank and/or lender.

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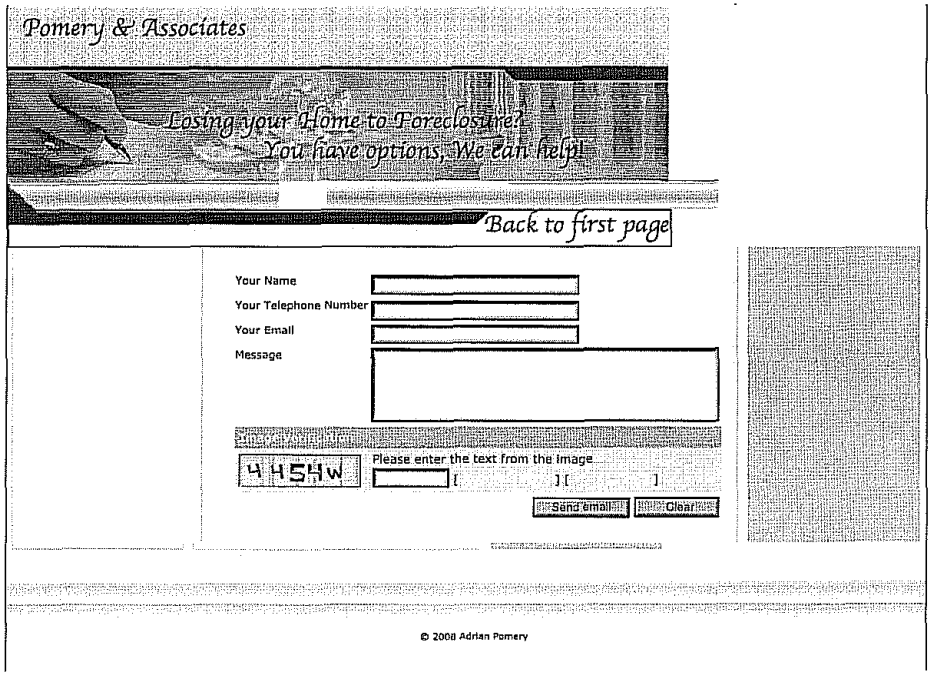

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HOMEOWNERS LEGAL ASSISTANCE - Loan Modification Services

Now is the perfect opportunity to negotiate a livable mortgage rate, have your loan modified and stop foreclosure on your dream home. Take advantage of the government bailout money given toYOUR lender to help YOU. Act now before it's too late!

Be Proactive, Save Your Home

Regardless of your current mortgage situation, Homeowners Legal Assistance will strive to negotiate a reasonable mortgage loan:

Complaint Exhibit C

Today is Thursday, April 30, 2009

About Homeowners Legal Assistance

Welcome to Homeowners Legal Assistance

With the current state of our economy, homeowners are faced with the daily challenge of keeping their homes, making ends meet, and just plain surviving! Finding the time and patience to deal with your mortgage company becomes a never ending ordeal. Literally, hundreds of modification companies have evolved but many lack the knowledge and have questionable reputations!

The task of choosing a reliable and trustworthy loss mitigation company to help you and your family is a daunting nightmare. Negotiating with the bank for a modification of your home loan can be an overwhelming process for many homeowners. That is why retaining the services of an experienced Loan Modification Firm is of extreme importance.

At Homeowners Legal Assistance, our mission and priority is to provide homeowners in every city across America with an ethical, affordable, and effective loss mitigation program to avoid Foreclosures. Our vision is inspired by creating the largest and most reputable loss mitigation law firm in the country by providing client resolution and superior customer service. It is our confident belief that our success ultimately depends on establishing a customer service oriented environment that instills the Integrity in each team member for the purpose of protecting "The American Dream".

You will find that the skill, professionalism, and consideration we offer each client is a truly stress relieving and a positive experience for you and your loved ones.

Our goal is to help you save your home!

Complaint Exhibit C

W[illegible]ressure your bank to pay attention to [illegible]ur needs because they know and trust us. We negotiate a significant number of cases each month and use that leverage when negotiating cases. We have brought together a knowledgeable team from loss mitigation, collections, real estate and banking industries to offer the most complete negotiation program available. We have rescued homeowners from foreclosure, adjustable mortgages, and lack of equity. Our proven track record gives us credibility with your lender, and our significant volume of cases gives us leverage when negotiating. Homeowners Legal Assistace is the right law firm to help you through this difficult time.

Complaint Exhibit C

Today is Thursday, April 30, 2009

Contact Homeowners Legal Assistance

Please submit your information and a representative will contact you in a timely manner.

Thank you for your interest!

Contact Info:
Homeowners Legal Assistance

Ph: 714-627-0505

Mon-Fri: 8a.m-6p.m (PST)

Sat: 9.am-12p.m (PST)

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FEDERAL TRADE COMMISSION

Matter No.: 092-3120

Matter Name: U.S. Foreclosure Relief

Description: Homeowners Legal Assistance

Free State Reporting, Inc.
1378 Cape St. Claire Road

Complaint Exhibit D

R E C O R D I N G

RECORDING: Are you losing your home to foreclosure? Are you behind on your mortgage and fear the worst? Homeowners Legal Assistance would like to offer you a free, no obligation consultation that will show you how to stop foreclosure, reduce your interest rates and save thousands on your mortgage. Do not let this economic slowdown take your home from you and your family. You have worked too hard. Homeowners Legal Assistance is an attorney-based loan modification firm that can negotiate the terms of your mortgage so you can afford to live in and enjoy your home.

Call for a free, no obligation consultation. There is no cost to find out how this program can help you save your home. Call 800-989-0688. That's 800-989-0688. It does not matter how far behind you are on payment or what your credit score is. Homeowners Legal Assistance is here to listen and help. Call now, 800-989-0688. 800-989-0688.

(End of recording.)

Complaint Exhibit D

C E R T I F I C A T E

I hereby certify that the foregoing has been transcribed to the best of my skill and ability from the audio recording.

Kay Maurer
Transcriber

Free State Reporting, Inc.
1378 Cape St. Claire Road

Complaint Exhibit D

Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 19, 2008

Barbara A. Sinsley
Manuel H. Newburger
Barron, Newburger, Sinsley & Wier, PLLC
2901 West Busch Boulevard
Tampa, Florida 33618

Dear Ms. Sinsley and Mr. Newburger:

This is in response to the request from the USFN, formerly known as the U.S. Foreclosure Network, for a Commission advisory opinion ("Request") regarding whether the Fair Debt Collection Practices Act ("FDCPA")[1] prohibits a debt collector in the foreclosure context from discussing settlement options in the collector's initial or subsequent communications with the consumer. The Request asserts that the receipt of information about settlement options could enable the consumer to save his or her home from foreclosure. As explained more fully below, the Commission concludes that debt collectors do not commit a *per se* violation of the FDCPA when they provide such information to consumers. Moreover, the Commission believes that it is in the public interest for consumers who may be subject to foreclosure to receive truthful, non-misleading information about settlement options, especially in light of the recent prevalence of mortgage borrowers who are delinquent or in foreclosure.[2]

[1] 15 U.S.C. §§ 1692 - 1692p.

[2] According to press reports, in 2007, there were an estimated 2.2 million foreclosure filings in the United States, a 75% increase from 2006. The number of foreclosure filings increased late in 2007 – in December there were 215,749 foreclosure filings, a 97% increase from the number of filings in December 2006. December was the fifth consecutive month in which foreclosure filings topped 200,000. Associated Press, *Home Foreclosure Rate Soars in 2007*, N.Y.TIMES, Jan. 29, 2008, *available at* www.nytimes.com/aponline/us/AP-Foreclosure-Rates.html. Mortgage delinquency is also escalating. The number of borrowers falling behind on first-lien mortgage payments for residences during 2007 was the highest it has been since 1986 – 2.64 million borrowers fell behind on payments. Michael M. Phillips, Serena Ng & John D. McKinnon, *Battle Lines Form Over Mortgage Plan*, WALL ST. J., Dec. 7, 2007, at A1.

USFN submitted the Request pursuant to Sections 1.1-1.4 of the Commission's Rules of Practice, 16 C.F.R. §§ 1.1-1.4. The Request focuses on two sections of the FDCPA, Sections 807 and 809, 15 U.S.C. §§ 1692e, 1692g,[3] and presents three specific questions for consideration:

> (1) Does a debt collector violate the FDCPA when he, in conjunction with the sending of a "validation notice" pursuant to Section 809(a) of the FDCPA, notifies a consumer of settlement options that may be available to avoid foreclosure?
>
> (2) Does a debt collector violate the FDCPA when he, subsequent to sending the validation notice pursuant to Section 809(a) of the FDCPA, notifies a consumer of settlement options that might be available to avoid foreclosure?
>
> (3) Does a debt collector commit a false, misleading or deceptive act or practice in violation of Section 807 of the FDCPA when he presents to a consumer settlement options that are available to the consumer to avoid foreclosure?

The Request states that there is no case law addressing these specific questions. We address the questions *seriatim*.

USFN's first two questions specifically reference Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a). Section 809(a) provides, in pertinent part, that a debt collector must, within the first five days after the initial communication with the debtor, provide a written notice containing specific information including the amount of the debt, the debtor's right to dispute the validity of the debt in writing within 30 days, and the collector's obligation to obtain verification of the debt in response to the consumer's dispute document. Congress enacted Section 809 to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[4]

Section 809(a) does not expressly prohibit debt collectors from adding language to the written validation notice with the mandatory disclosures. The statute also does not expressly prohibit debt collectors from presenting information to consumers about settlement options in subsequent communications. The Commission therefore concludes that there is no *per se* violation of Section 809(a) of the FDCPA if a debt collector includes information regarding foreclosure settlement options along with a validation notice or in subsequent communications after that notice is delivered.

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[3] The Commission has considered only these sections in rendering this opinion and it should not be construed to pertain to any other section of the FDCPA, to any other law, or to any issue of legal ethics.

[4] S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1698.

Nevertheless, collectors must take care that communicating information about settlement options does not undermine the consumer protections in Section 809(a). The touchstones of Section 809(a) are the consumer's rights to dispute his or her debt in writing within 30 days and to obtain verification of that debt from the collector. To protect these rights, in 2006 Congress amended Section 809(b) to expressly state that "[a]ny collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt. . . ."[5] This statutory amendment ratified court decisions holding that debt collectors that provide consumers with information in addition to the mandatory disclosures violate Section 809(a) if the additional information effectively obscures the consumer's right to dispute his or her debt and obtain verification from the collector.[6] Specifically, these cases concluded that providing additional information is unlawful if it overshadows or contradicts required disclosures or creates confusion regarding the basic right to dispute the debt and obtain verification from the collector.[7] In making these determinations, courts considered the communication from the perspective of an unsophisticated consumer.[8]

In sum, with respect to USFN's first two questions presented in its Request, the Commission concludes that there is no *per se* violation of Section 809(a) if a debt collector in the foreclosure context discusses settlement options in the collector's initial or subsequent communications with the consumer. This conclusion, however, does not prevent a fact-based finding that a specific communication violates the Act if it overshadows or is inconsistent with the disclosures of the consumer's right to dispute the debt within 30 days.

USFN's third question asks whether a debt collector commits a false, misleading or deceptive act or practice in violation of Section 807 of the FDCPA when he presents to a consumer settlement options that are available to the consumer to avoid foreclosure. Section 807 of the FDCPA establishes a general prohibition against the use of any "false, deceptive or misleading representation or means in connection with the collection of any debt" and provides a list of 16 specific practices that are *per se* false, deceptive or misleading under the Act. In enacting Section 807, Congress noted that this general prohibition on deceptive collection practices would "enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed."[9]

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[5] 15 U.S.C. § 1692g(b).

[6] *See, e.g., Swanson v. Oregon Credit Servs.,* 869 F.2d 1222 (9th Cir. 1988).

[7] *Id.; See, e.g.*, *Durkin v. Equifax Check Servs.,* 406 F.3d 410 (7th Cir. 2005); *Shapiro v. Riddle & Assocs*., 351 F.3d 63 (2d Cir. 2003); *Renick v. Dun & Bradstreet Receivable Mgmt. Servs.,* 290 F.3d 1055 (9th Cir. 2002).

[8] *See, e.g., Sims v. G.C. Servs.*, 445 F.3d 959 (7th Cir. 2006) ("unsophisticated consumer"); *Smith v. Transworld Sys.*, 953 F.2d 1025 (6th Cir. 1992) ("least sophisticated consumer").

[9] S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1698.

As a general matter, the Commission concludes that a debt collector's communication with a consumer regarding his or her options to resolve mortgage debts and to potentially avoid foreclosure would not necessarily violate either the general or specific prohibitions of Section 807. However, we also stress that a particular communication with settlement option information could be deceptive in violation of Section 807 if it contains a false or misleading representation or omission of material fact. Determining whether a specific communication is false or misleading is a fact-based inquiry that considers all the facts and circumstances surrounding the particular communication at issue.[10]

After reviewing the language of the FDCPA, its legislative history, and relevant case law, as well as the information contained in the Request, the Commission concludes that a debt collector in the foreclosure context does not commit a *per se* violation of Sections 807 or 809 of the FDCPA when he or she addresses settlement options in the collector's initial or subsequent communications with the consumer.

By direction of the Commission.

Donald S. Clark
Secretary

[10] *See Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir. 1985) (noting that FDCPA expands pre-existing FTC deception authority); *see also FTC Policy Statement on Deception, appended to In re Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174-84 (1984) (setting forth deception test).

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Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA

[EXEMPT FROM FILING FEES UNDER GOVT. CODE SEC. 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HOME RELIEF SERVICES, LLC, a California limited liability company; THE DIENER LAW FIRM, a California professional corporation; GOLDEN STATE FUNDING, INC., a Nevada corporation; PAYMENT RELIEF SERVICES, INC., a California corporation, CHRISTOPHER L. DIENER, an individual; KATHLEEN MARRERO-DAVIS, an individual; TERENCE GREEN SR., an individual; STEFANO MARRERO, an individual; MAYA BURRELL MARRERO, an individual; RONALD C. SPECTER, an individual; KENNETH BUHLER, an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No.

COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., Attorney General of the State of California, alleges the following on information and belief:

1. This action is brought against Defendants, who regularly violate California law while preying on consumers facing foreclosure and the loss of their homes. Defendants have unlawfully charged thousands of customers up front fees (ranging in the thousands of dollars) while falsely promising to help them negotiate better mortgage terms from their lenders and to rescue them from foreclosure. Despite taking these exorbitant advance fees, Defendants provide little or no assistance to their customers.

2. As many other foreclosure rescue companies have done, in an attempt to avoid statutory prohibitions on collecting fees before any services have been rendered, Defendants have included one or more attorneys in their scheme. Noting the alarming trend in the number of complaints issued against attorneys involved with foreclosure rescue companies, the State Bar has issued an Ethics Alert cautioning attorneys from lending their names to loan modification companies when non-lawyers purportedly negotiate with the lenders on the customers' behalf but actually provide little to no services; meanwhile, the non-lawyers also collect fees from the consumers and provide distressed homeowners with reckless and harmful advice on how to deal with their lenders.

3. Thousands of California consumers have fallen prey to Defendants' unlawful scam, losing thousands of dollars that could have been used toward mortgage payments or finding new housing. In this action, Plaintiff seeks an order permanently enjoining Defendants from engaging in their unlawful business practices, granting restitution for affected consumers, imposing civil penalties, and all other relief available under California law.

DEFENDANTS AND VENUE

4. Defendant Home Relief Services, LLC (HRS) is a California limited liability company with its principal place of business at 9910 Research Drive, Irvine, California 92618. HRS has also conducted business at 9150 Irvine Center Drive, Irvine, California 92618, and at 1665 West Katella Avenue, Anaheim, California 92802. HRS has done business under the fictitious name US Loan Mod Processing. HRS is not a law corporation or licensed as a real

estate broker or an entity authorized to make loans or extensions of credit. At all relevant times, HRS has transacted and continues to transact business throughout California, including Orange County.

5. Defendant the Diener Law Firm (Diener Law Firm) is a California professional corporation with its principal place of business at 18881 Von Karman Avenue, Suite 1600, Irvine, California 92612. At all relevant times, the Diener Law Firm has transacted and continues to transact business throughout California, including Orange County.

6. Defendant Golden State Funding, Inc. (Golden State Funding) is a Nevada corporation licensed to do business in California with its principal place of business at 9910 Research Drive, Irvine, California 92618. Golden State Funding also does business at 30211 Avenida de Las Banderas, Suite 200, Rancho Santa Margarita, California 92688. Golden State Funding also does business under the fictitious names Golden State Funding & Realty and GS Funding, Inc. At all relevant times, Golden State Funding has transacted and continues to transact business throughout California, including Orange County. At all relevant times, Golden State Funding was a corporation licensed by the California Department of Real Estate (DRE).

7. Defendant Payment Relief Services, Inc. (PRS) is a California corporation with its principal place of business at 125 Baker Street, Suite 290, Costa Mesa, California 92626. PRS has previously operated as Mercury Financial Services Corporation. PRS is not a law corporation or licensed as a real estate broker or an entity authorized to make loans or extensions of credit. At all relevant times, PRS has transacted and continues to transact business throughout California, including Orange County.

8. Defendant Christopher L. Diener (Diener), an individual, is a licensed California attorney doing business at the Diener Law Firm. Defendant Diener lists his business address as 18881 Von Karman Avenue, Suite 1600, Irvine, California 92612. Defendant Diener resides at 2 Roshelle Lane, Ladera Ranch, California 92694 and 22 Potters Bend, Ladera Ranch, California 92694. Defendant Diener, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all

relevant times, Defendant Diener has transacted and continues to transact business throughout California, including Orange County. Defendant Diener is a resident of Orange County.

9. Defendant Kathleen Marrero-Davis (Marrero-Davis) is an individual also known as Kathleen Davis and Kathleen Marrero. Defendant Marrero-Davis is a principal of HRS and also does business under the name Dynamic Business Solutions. Dynamic Business Solutions is at 2433 West Jefferson Boulevard, Los Angeles, California 90018. Defendant Marrero-Davis resides at 3529 5th Avenue, Los Angeles, California 90018. Defendant Marrero-Davis, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Marrero-Davis has transacted and continues to transact business throughout California, including Orange County. Defendant Marrero-Davis is a resident of Los Angeles County.

10. Defendant Terence Green Sr. (Green), an individual, is a principal of HRS and Golden State Funding. Defendant Green resides at 2 Merrill Hill, Ladera Ranch, California 92694. Defendant Green, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. Defendant Green is not an attorney and is not licensed as a real estate broker or person authorized to make loans or extensions of credit. At all relevant times, Green has transacted and continues to transact business throughout California, including Orange County. Green is a resident of Orange County.

11. Defendant Stefano Marrero (Marrero), an individual, is a principal of HRS and Golden State Funding. Defendant Marrero resides at 12 Roshelle Lane, Ladera Ranch, California 92694. Defendant Marrero, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Marrero was a real estate salesperson licensed by DRE and associated with Golden State Financial. Defendant Marrero is not an attorney and is not licensed as a real estate broker or person authorized to make loans or extensions of credit. At all relevant times, Defendant Marrero has transacted and continues to transact business throughout California, including Orange County. Defendant Marrero is a resident of Orange County.

12. Defendant Maya Burrell Marrero (Burrell Marrero), an individual, is a principal of Golden State Funding. Defendant Burrell Marrero resides at 12 Roshelle Lane, Ladera Ranch, California 92694. Defendant Burrell Marrero, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. Defendant Burrell Marrero is a real estate broker licensed by DRE and, at times relevant to this complaint, Defendant Burrell Marrero was the broker of record for Golden State Funding and doing business as GS Funding. At all relevant times, Defendant Burrell Marrero has transacted and continues to transact business throughout California, including Orange County. Defendant Burrell Marrero is a resident of Orange County.

13. Defendant Ronald Craig Specter (Specter), an individual, is a licensed California attorney and an agent of Defendant HRS. Defendant Specter lists his business address as 4685 MacArthur Court, Suite 422, Newport Beach, California 92660. Defendant Specter resides at 19 Lennox Court, Ladera Ranch, California 92694. Defendant Specter, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Specter has transacted and continues to transact business throughout California, including Orange County. Defendant Specter is a resident of Orange County.

14. Defendant Kenneth Buhler (Buhler), an individual, is a principal of PRS. Defendant Buhler resides at 3044 Kittendale Bay, Costa Mesa, California 92626. Defendant Buhler, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At times relevant to this complaint, Defendant Buhler was a real estate broker licensed by DRE. At all relevant times, Defendant Buhler has transacted and continues to transact business throughout California, including Orange County. Defendant Buhler is a resident of Orange County.

15. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as Does 1 through 100, inclusive, presently are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to allege the true names of Does 1 through 100 when the same have been

ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named defendants participated in some or all of the acts alleged herein.

16. The defendants identified in Paragraphs 4 through 15 above are referred to collectively in this Complaint as the "Defendants."

17. At all times mentioned herein, each of the Defendants acted as the principal, agent, or representative of each of the other Defendants, and in doing the acts herein alleged, each Defendant was acting within the course and scope of the agency relationship with each of the other Defendants, and with the permission and ratification of each of the other Defendants.

18. At all relevant times, Defendants have controlled, directed, formulated, known and/or approved of, and/or agreed to the various acts and practices of each of the Defendants.

19. Whenever reference is made in this Complaint to any act of any Defendant or Defendants, such allegation shall mean that such Defendant or Defendants did the acts alleged in this Complaint either personally or through the Defendant's or Defendants' officers, directors, employees, agents and/or representatives acting within the actual or ostensible scope of their authority.

20. At all times mentioned herein, each Defendant knew that the other Defendants were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing that other Defendants were engaging in such unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts alleged in this Complaint, and thereby aided and abetted the other Defendants in the unlawful conduct.

21. Defendants have engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is and was to engage in the violations of law alleged in this Complaint. The conspiracy, common enterprise, and common course of conduct continue to the present.

22. Whenever reference is made in this Complaint to any act of Defendants, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants named in that cause of action.

23. Each Defendant committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Additionally, some or all of the defendants acted as the agents of the other defendants, and all of the Defendants acted within the scope of their agency if acting as an agent of another.

24. The violations of law alleged in this Complaint occurred in Orange County and elsewhere throughout California and the United States.

DEFENDANTS' BUSINESS ACTS AND PRACTICES

25. Since at least Spring 2008 until approximately June 2008, Defendants operated primarily under the names Home Relief Services, LLC and Payment Relief Services, Inc. From June 2008 to approximately February 2009, Defendants operated primarily under the name Home Relief Services, LLC. In February 2009, DRE ordered Defendant HRS, Defendant Marrero, Defendant Green, and other persons to desist and refrain from continued unlicensed activities related to marketing and soliciting consumers for loan modification services. On February 9, 2009, Defendant Specter, acting as counsel for Defendant HRS, Defendant Marrero, and Defendant Green, informed DRE that Defendant HRS would cease operation on February 27, 2009, and the remainder of Defendant HRS' client files would be forwarded to Defendant Diener Law Firm. Thereafter, Defendants have operated under the names US Loan Mod Processing and Diener Law Firm.

26. Since at least Spring 2008, Defendants have advertised, marketed, offered for sale, and sold purported mortgage loan modification and foreclosure rescue services. As more particularly alleged below, Defendants engaged in a scheme to swindle distressed homeowners by enticing them to engage Defendants to negotiate loan modifications from their respective lenders. Defendants falsely represented both their success rate in negotiating loan modifications for customers and the type of loan modification they could secure for homeowners, including lower, fixed interest rates, principal reductions, lower monthly payments, and forgiveness of arrears. Defendants market their services to homeowners who are in financial distress and in danger of losing their homes to foreclosure.

27. Defendant HRS and Defendant PRS are not licensed by DRE. None of the Defendants have submitted advance fee agreement applications and none of the Defendants have received the required response from DRE — known as "no objection" — allowing them to charge advance fees from consumers.

28. Defendants market and sell their loan modification services to consumers who are particularly vulnerable to fraud, including the disabled and/or those 65 years of age or older, and Spanish-speaking consumers.

29. Before engaging Defendants' services, many of Defendants' customers had already defaulted on their mortgages by falling behind on their mortgage payments.

30. Defendants market and sell their loan modification services to consumers even when they are aware that a lender has recorded a notice of default on the consumer's home.

31. Defendants market and sell their loan modification services to consumers even when they are aware that a lender may have posted a notice of trustee sale on the consumer's property, which typically occurs three months after a notice of default has been recorded and notifies the homeowner that a sale will take place within 20 days.

32. Defendants solicit consumers for loan modification services in a number of ways, including advertising on radio and television, and direct mailings. Through these advertisements, consumers are told that no matter how dire their housing situation, Defendants can offer a solution to allow them to keep their homes. The advertisements list a toll-free number for them to call for more information.

33. Defendants employ the use of logos and seals on their documents, which appear to resemble the governmental seal of the United States Department of Housing and Urban Development.

34. Defendants also solicit consumers through telemarketing and in-home solicitations, and through the use of referrals from brokers and other third parties.

35. Defendants are not currently registered as telephonic sellers in the State of California.

36. When consumers speak to Defendants' representatives over the telephone or in person, they are told that Defendants have significant negotiating experience and success in negotiating with their particular lenders Defendants also tell consumers that their success rate in modifying loans is 90% or 95%. In fact, Defendants are unable to obtain loan modifications for most of their customers.

37. Despite the fact that they are unable to negotiate loan modifications for most of their customers, Defendants' representatives make the following false statements to the consumer after obtaining information about the prospective customer's mortgage:

(a) Defendants guarantee a loan modification for their customers;

(b) Defendants will be able to negotiate lower interest rates, including securing fixed rates for adjustable loans, from lenders;

(c) Defendants will be able to secure principal reductions of the consumer's mortgage;

(d) Defendants will be able to secure lower monthly mortgage payments for the consumer;

(e) Defendants will be able to eliminate a consumer's second mortgage through a loan modification; and

(f) Defendants will be able to get the consumer's arrears forgiven by the consumer's lenders.

38. In some cases, Defendants have promised consumers that they could obtain interest rates in the range of 4%; conversion of adjustable rate loans to low fixed-rate loans; 50% principal reductions; and principal reductions of $100,000 or more. Based on Defendants' presentation of such favorable proposed terms, consumers are induced to sign contracts to engage Defendants' loan modification services.

39. Defendants tell consumers that the loan modification process may be completed in as few as 30 days or between 30 and 60 days. Once consumers engage Defendants' services, however, Defendants revise the length of the process to as long as nine months. In fact, most customers never obtain a loan modification from Defendants.

40. Defendants also tell consumers that if Defendants are unable to obtain a loan modification for them, they will be able to receive a full refund of fees paid (or, in some cases, minus a processing fee). When customers request a refund, however, Defendants deny the request or do not respond at all.

41. Defendants also falsely tell consumers that attorneys affiliated with Defendants review customers' financial paperwork and also negotiate with the lenders on their behalf. Indeed, as a result of Defendants' solicitation, some of Defendants' customers are pressed by Defendants' representatives to sign or otherwise unwittingly sign contracts with Defendants Diener and Diener Law Firm, believe the contracts are with Defendant HRS or another entity. These contracts obligate consumers to pay Defendants Diener and Diener Law Firm a fee and authorize Defendants Diener and Diener Law Firm to hire the other Defendants, even though the consumer has never spoken with nor ever heard of Defendants Diener and Diener Law Firm. Customers are not given any opportunity to speak with or have any contact with any attorneys affiliated with Defendants about their loans, and neither Defendants Diener and Diener Law Firm nor any other attorneys affiliated with Defendants review customers' financial documents or negotiate with lenders on their behalf. Moreover, Defendants' customers are informed by their lenders that the lenders have not been contacted by Defendants Diener and Diener Law Firm, or any of their lawyers, on the customers' behalf.

42. While California's law defining and regulating foreclosure consultants under the Mortgage Foreclosure Consultant Act ("the Act"), as codified in Civil Code section 2945 *et seq*., includes exceptions for attorneys licensed to practice law in California when "render[ing] [foreclosure consultant] service in the course of his or her practice as an attorney at law" (Civil Code, § 2945.1(b)(1)), and while Defendant Diener is an attorney licensed to practice law in California, the exemption does not apply here, nor do any of the exceptions set forth in the Act. Defendant Diener does not perform (or claim to perform) foreclosure consultant services for consumers while also providing them with legal services.

43. Defendants improperly collect fees before completing all services they agree to provide to consumers.

44. Defendants' contracts with consumer are deficient in multiple ways, including but not necessarily limited to the following:

(a) Defendants do not include a notice, printed in at least 14-point boldface type, advising consumers that Defendants cannot take money until they have completely finished doing everything they say they would do, and that Defendants cannot make consumers sign any lien, deed of trust, or deed;

(b) Defendants fail to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants;

(c) Defendants do not always providing consumers with a notice of cancellation form prescribed by law;

(d) Defendants collect advance fees for loan modification services, even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 26 through 28 above; and

(e) Defendants are not registered with the Department of Justice as foreclosure consultants.

45. Defendants inform consumers that they will be acting as their agent and negotiator with their lenders. To that end and to control what is communicated to the lenders, Defendants instruct customers not to speak to their lenders about their financial circumstances and to avoid responding to any communications they received from the lender. Defendants instruct customers to forward all communications from the lender to Defendants. In this way, Defendants' customers are shut out of negotiations with their lender and depend on Defendants for information about the progress of their loan modifications. However, when Defendants fail to contact or remain in contact with their lenders, and the customers proceed under the Defendants' advice and steadfastly refuse to communicate with their lenders, the lenders cancel or reject the loan modification application altogether, due to the borrowers' perceived lack of interest or cooperation with the lenders.

46. Defendants require consumers to pay Defendants an upfront fee ranging from $ 1,395 to $ 4,444 before Defendants will render loan modification services. Many of the distressed homeowners solicited do not have sufficient financial resources to make their mortgage payments at all, much less pay Defendants' upfront fee and continue making their mortgage payments.

47. Defendants inform consumers that they may suspend their mortgage payments (or continue to do so, as the case may be) while they have engaged Defendants for loan modification services. By doing so, consumers could then apply whatever money they would have normally used to make mortgage payments to pay Defendants' upfront fee. Defendants assure consumers that their lenders will either forgive these missed payments altogether or include them as part of a future modification agreement. Defendants also advise consumers that lenders will not modify mortgages that are not already in default, and that lenders will not be convinced that consumers are in financial distress until they actually fail to make their monthly mortgage payment. As a result, Defendants' customers, in reliance on this advice and assurance, miss mortgage payments or continue to do so. In fact, heeding this advice caused many customers to have their foreclosure proceeding accelerated by their lenders.

48. Defendants also prepare false financial statements that do not reflect their customers' actual income and expenses and submit the fraudulently modified information to lenders. Specifically, Defendants inflate income amounts or create additional income streams, while also reducing expenses and debts, so that the financial worksheet ultimately submitted to the lender reflects income greater than expenses. When their customers inquire about this practice, Defendants explain that it was to ensure the success of their loan modification application to the lender. In other instances, Defendants knowingly submit false information related to consumers' income and expenses to federally insured lenders without consumers' knowledge and/or permission.

49. Defendants solicit and market their loan modification services to Spanish-speaking consumers in Spanish but present these consumers with English-language contracts to execute.

Defendants and their representatives did not explain the contract terms to the Spanish-speaking consumers before they are asked to sign the documents.

50. After Defendants receive the advance fee payments from customers, Defendants rarely remain in contact with them. While customers repeatedly call, e-mail, fax, or even visit Defendants' offices seeking updates on the status of their loan modification applications, Defendants regularly failed to respond to their inquiries.

51. In the instances where customers are able to make contact with Defendants and their agents, Defendants tell customers to remain patient because negotiations are proceeding normally with the lender. In other instances, Defendants tell customers that a modification agreement is imminent or that Defendants have finalized modification agreements with their lenders. These representations are false, and Defendants know they are false at the time they are stated.

52. In fact, despite assurances to their customers to the contrary, Defendants make very little effort to initiate contact or negotiate with lenders. Beyond forwarding to the lenders authorization forms signed by their customers allowing Defendants to discuss the consumers' loan with the lenders and sending the doctored financial worksheets that Defendants themselves drafted, Defendants make no attempt to seek a loan modification on behalf of their customers. Defendants' customers are informed by their lenders that the lenders have not been contacted by Defendants Diener and Diener Law Firm, or any of their lawyers, on the customers' behalf. This essentially represents the entirety of the actual services provided by Defendants.

53. When customers contact their lenders to confirm Defendants' statements about the progress of their modification application, their lenders tell them they received no communications from Defendants or, at most, that the only communication the lenders received from Defendants was the signed authorization form allowing Defendants to discuss the consumers' loan with the lenders and the financial worksheet. Often, the lenders try to contact Defendants for more information regarding their clients' loans to no avail.

54. Lenders offer some of Defendants' customers forbearance agreements. Under the terms of a forbearance agreement, the homeowner must pay back any missed mortgage payments

over time, plus interest, and the lender agrees not to foreclose on the borrower. While some agreements allow the homeowner to delay making mortgage payments for a length of time, the reprieve is short-lived and costly, and not a permanent loan modification. Forbearance agreements do not reduce the interest rate or principal balance of the loan but merely allow lenders to recover past due mortgage payments. Indeed, because these agreements typically involve interest payments on past due amounts and can also include other fees and penalties that accrued while the borrower missed making mortgage payments, the resultant mortgage payment a homeowner must pay under a forbearance plan is usually much higher than the original amount.

55. When lenders have offered forbearance agreements to their customers, Defendants claim to their customers that they fulfilled their obligations to negotiate a loan modification because the customers have been given a way to resolve the matter with their lenders, no matter how unaffordable the option and despite the fact that the "modification" proposed results in higher, not lower, payments for the customers.

56. After customers realize that Defendants are not going to provide assistance with a loan modification, the customers demand the promised refund of their fees. Defendants regularly deny these refund requests or promise customers refunds but then fail to return any funds.

57. Defendants fail to obtain for their customers the promised mortgage loan modifications that would lower their interest rates and/or principal. Instead, despite having paid thousands of dollars to Defendants to prevent such an occurrence, customers lose their homes to foreclosure, or must secure a short sale or are forced to attempt to negotiate a modification with their lenders without any assistance from Defendants.

58. Consumers retain Defendants to be their negotiator and advisor during the loan modification process. Defendants then use information provided by their customers to market their real estate services to lenders. Defendants advertised *to their own customers' lenders* that, on average, it would take eight months before lenders could sell their clients' homes. This pitch is not meant to advantage the customer; rather, Defendants mean to highlight their "retail auction" services to lenders, whereby Defendants act as the lenders' agent in a short sale of their customers' homes. Defendants assure the lenders that Defendants could short sell their

customers' homes in 45 days or less. By exploiting their trusted position with their customers and their inside information about their customers' financial circumstances, Defendants attempt to use this information for the benefit of themselves and the lenders, and to the extreme detriment of their customers.

59. Defendants acted as mortgage loan brokers in connection with negotiating home loans for customers, performing services for customers in connection with home loans, and/or engaging in any other conduct requiring real estate licensure and, therefore, owed a fiduciary duty to each customer. That fiduciary duty imposed an obligation (1) to make a full and accurate disclosure of the status of the customer's loan modification application and the material terms of any proposed modification agreement that might affect a borrower's decision to accept the modification; (2) to act always in the utmost good faith toward the customer; (3) to act in accordance with principles of complete loyalty to the customer's best interests and to the exclusion of all others' interests; (4) to avoid taking any positions or making any statements that are in conflict with the customer's best interests; and (5) not to obtain any advantage over the customer. By offering to be the lenders' agent to short sale their customers' homes while purporting to act as their customers' agent in loan modification, Defendants violated their fiduciary duties to their customers.

60. Consumers have suffered and continue to suffer substantial monetary loss to Defendants as a result of Defendants' unlawful acts and practices. Defendants have been unjustly enriched as a result of the unlawful practices set forth in this Complaint. Absent injunctive relief from the Court, Defendants are likely to continue to injure consumers and harm the public interest.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500

(UNTRUE OR MISLEADING REPRESENTATIONS)

61. Plaintiff realleges Paragraphs 1 through 60 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

62. Defendants have violated and continue to violate Business and Professions Code section 17500 by making or causing to be made untrue or misleading statements with the intent to

induce members of the public to purchase Defendants' services, as described in Paragraphs 32 through 41 above. Defendants' untrue or misleading representations include, but are not limited to, the following:

(a) That Defendants' success rate in modifying loans is 90% or 95%;

(b) That Defendants have significant negotiating experience and success with particular lenders;

(c) That Defendants guarantee a loan modification for customers;

(d) That Defendants will be able to secure lower interest rates, including fixed rates for adjustable loans, for customers;

(e) That Defendants will be able to secure principal reductions of the customers' mortgages;

(f) That Defendants will be able to secure lower monthly mortgage payments for customers;

(g) That Defendants will be able to eliminate a customer's second mortgage through a loan modification;

(h) That Defendants will be able to get customers' arrears forgiven by the customers' lenders;

(i) That the upfront fees that Defendants collect from their customers are refundable if the customer does not get a loan modification; and

(j) That attorneys affiliated with Defendants review the customers' financial paperwork and also negotiate with the lenders on their behalf.

63. At the time the representations set forth in Paragraph 62 were made, Defendants knew or by the exercise of reasonable care should have known that the representations were untrue or misleading.

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SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

64. Plaintiff realleges Paragraphs 1 through 63 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

65. From a date specific unknown to Plaintiff and continuing to the present, Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Failing to perform on their promises, made in exchange for upfront fees from their customers, that Defendants would negotiate modifications of their mortgage loans and secure lower and/or fixed interest rates, principal reductions, and, in some cases, elimination of second mortgages. Defendants did little or nothing to help customers modify their mortgage loans. Instead, consumers, having already paid large sums of money to Defendants, lost their homes or were forced to attempt a loan modification on their own, as described in Paragraph 57 above;

(b) Luring customers into paying upfront fees with promises to refund all, or most, of the upfront fees if they do not get a loan modification. When customers learned that their lenders were unwilling to modify their loans, or that Defendants had done little or nothing to assist in a modification, they demanded the promised refund. Despite Defendants' promises, Defendants regularly denied customers' refund requests, as described in Paragraphs 40 and 56 above;

(c) Deceiving customers into believing that failing to contact their lenders, or evading their lenders' communications, would increase the odds that their modification applications would be successful. Customers relied on Defendants' advice because Defendants assured them that Defendants would remain in contact with lenders. In fact, Defendants were not in contact with lenders and lenders assumed that consumers were not willing to work with the

lender to save their homes. Heeding Defendants' advice placed customers in even greater jeopardy of losing their homes, as described in Paragraph 45 above; and

(d) Deceiving customers into believing that suspending mortgage payments, and diverting those funds to pay Defendants' upfront fees instead, would increase the odds that their modification application would be successful. Defendants also promised their customers that the missed mortgage payments would not endanger or adversely impact lenders' decisions on their modification applications or otherwise accelerate the foreclosure process. Defendants' advice placed consumers in even greater jeopardy of losing their homes, as described in Paragraphs 46 and 47 above;

(e) Negotiating with consumers in a language other than English, but requiring consumers to sign contracts printed in English, as described in Paragraph 49 above;

(f) Violating Penal Code section 487, by taking money of a value exceeding $400 from consumers by theft, as described in Paragraphs 46, 57, and 60 above;

(g) Violating Penal Code section 532, by knowingly and designedly obtaining consumers' money by false pretenses, as described in Paragraphs 37 and 46 above;

(h) Violating section 17511.3 of the Business and Professions Code by failing to register as a telephonic seller prior to utilizing the telephone to conduct sales of its loan modification services, as described in Paragraphs 34 and 35 above;

(i) Violating Business and Professions Code section 17533.6, by employing the use of logos and seals on their documents, which appear to resemble the governmental seal of the United States Department of Housing and Urban Development, as described in Paragraph 33 above;

(j) Violating Business and Professions Code sections 6151 and 6152, by engaging in "running and capping," the practice of non-attorneys obtaining business for an attorney, as described in Paragraph 41 above;

(k) Violating Business and Professions Code section 6155, by Defendants HRS, Golden State Funding, PRS, Marrero-Davis, Green, Marrero, Burrell Marrero, Specter, Buhler, and Does 1-100 in directly or indirectly referring potential clients to Defendants Diener

and Diener Law Firm without seeking registration as a lawyer referral service by the State Bar, and by Defendants Diener and Diener Law Firm in accepting referrals of such potential clients, as described in Paragraph 41 above;

(l) Violating 18 United States Code section 1014 and California Penal Code section 532a by knowingly submitting false statements regarding their customers' income and expenses in attempt to induce federally insured lenders to agree to modifications of the customers' mortgage loans, as described in Paragraph 48 above;

(m) Violating Civil Code section 1632 by negotiating foreclosure consultant contracts primarily in Spanish to Spanish-speaking consumers, but not providing a translation of the contract in that language before requiring the consumer to sign a contract printed in English, as described in Paragraph 49 above;

(n) Violating their fiduciary duty to their customers by offering to be the lenders' agent to short sale the consumers' homes while acting as the customers' agent in loan modification negotiations, as described in Paragraphs 58 and 59 above;

(o) Violating Business and Professions Code section 17500, as more particularly alleged in Paragraphs 61 through 63 above.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS HRS, GOLDEN STATE FUNDING, PRS, MARRERO-DAVIS, GREEN, MARRERO, BURRELL MARRERO, BUHLER, AND DOES 1 THROUGH 50 (COLLECTIVELY NON-ATTORNEY DEFENDANTS)

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 (UNFAIR COMPETITION)

66. Plaintiff realleges Paragraphs 1 through 65 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

67. From a date specific unknown to Plaintiff and continuing to the present, Non-Attorney Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts

or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Violating Civil Code section 2945.3, subdivision (b) by not including the required notice in their contract, as described in Paragraph 44 above;

(b) Violating Civil Code section 2945.3, subdivision (d) by failing to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants, as described in Paragraph 44 above; and

(c) Violating Civil Code section 2945.3, subdivisions (e) and (f) by not always providing consumers with the Notice of Cancellation form required under the statute, as described in Paragraph 44 above.

FOURTH CAUSE OF ACTION AGAINST NON-ATTORNEY DEFENDANTS

VIOLATION OF SECTION 2945.4 OF THE CIVIL CODE

68. Plaintiff realleges Paragraphs 1 through 67 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

69. In addition to the conduct alleged as part of the Second and Third Causes of Action in this Complaint, Non-Attorney Defendants also violate subdivision (a) of section 2945.4 of the Civil Code by collecting advance fees for loan modification services even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 29 through 31 and Paragraph 44 above.

FIFTH CAUSE OF ACTION AGAINST NON-ATTORNEY DEFENDANTS

VIOLATION OF SECTION 2945.45 OF THE CIVIL CODE

70. Plaintiff realleges Paragraphs 1 through 69 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

71. In addition to the conduct alleged as part of the Second, Third, and Fourth Causes of Action in this Complaint, Non-Attorney Defendants also violate section 2945.45 of the Civil

Code by failing to register with the Department of Justice as foreclosure consultants, as described in Paragraph 44 above.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS SPECTER, DIENER, AND DIENER LAW FIRM

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 (UNFAIR COMPETITION)

72. Plaintiff realleges Paragraphs 1 through 71 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

73. In addition to the conduct alleged as part of the Second Cause of Action in this Complaint, Defendants Specter, Diener and Diener Law Firm, as attorneys, have engaged in unfair competition as defined in Business and Professions Code section 17200 by engaging in acts and practices which include, but are not necessarily limited to:

(a) Violating the fiduciary duty and duties of good faith and fair dealing owed to their clients/customers by failing to review financial documents or negotiate with lenders on their behalf, as described in Paragraph 41 above;

(b) Violating California Rules of Professional Conduct, rule 1-320(A) by directly or indirectly sharing legal fees with a non-lawyer, as described in Paragraph 41 above;

(c) Violating California Rules of Professional Conduct, rule 1-320(B) by compensating persons or entities for the purpose of securing employment or as a reward for having made a recommendation resulting in the employment of Defendants Diener and Diener Law Firm by a client, as described in Paragraph 41 above;

(d) Violating California Rules of Professional Conduct, rule 1-300(A) by aiding persons or entities in the unauthorized practice of law, as described in Paragraph 41 above;

(e) Violating California Rules of Professional Conduct, rule 3-110(A) by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as described in Paragraph 41 above; and

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(f) Violating California Rules of Professional Conduct, rule 4-200(A) by entering into an agreement for, charge, or collect an illegal or unconscionable fee, as described in Paragraph 41 above.

74. From a date specific unknown to Plaintiff and continuing to the present, Defendants Specter, Diener and Diener Law Firm, and each of them, have aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Violating Civil Code section 2945.3, subdivision (b) by not including the required notice in their contract, as described in Paragraph 44 above;

(b) Violating Civil Code section 2945.3, subdivision (d) by failing to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants, as described in Paragraph 44 above;

(c) Violating Civil Code section 2945.3, subdivisions (e) and (f) by not always providing consumers with the Notice of Cancellation form required under the statute, as described in Paragraph 44 above; and

(d) Violating Civil Code section 2945.3, subdivision (a) of section 2945.4 of the Civil Code by collecting advance fees for loan modification services even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 29 through 31 and Paragraph 44 above.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS MARRERO, BURRELL MARRERO, AND BUHLER

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

75. Plaintiff realleges Paragraphs 1 through 74 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

76. In addition to the conduct alleged as part of the Second, Third, Fourth, and Fifth Causes of Action in this Complaint, Defendants Marrero, Burrell Marrero, and Buhler, as licensed real estate professionals, engaged in unfair competition as defined in Business and Professions Code section 17200 by engaging in acts and practices which include, but are not necessarily limited to, violating the fiduciary duty and duties of good faith and fair dealing owed to their clients/customers by failing to negotiate with lenders on their behalf, as described in Paragraphs 45, 50, and 57 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That Defendants, their successors, agents, representatives, employees, assigns and all persons who act in concert with Defendants be permanently enjoined from making any untrue or misleading statements in violation of Business and Professions Code section 17500, including, but not limited to, the untrue or misleading statements alleged in this Complaint, under the authority of Business and Professions Code section 17535;

2. That Defendants, their successors, agents, representatives, employees, assigns and all persons who act in concert with Defendants be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, the acts and practices alleged in this Complaint, under the authority of Business and Professions Code section 17203;

3. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any Defendant of any practice which violates section 17500 of the Business and Professions Code, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any such practice, under the authority of Business and Professions Code section 17535;

4. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any Defendant of any practice which constitutes unfair competition or as may be necessary to restore to any person

in interest any money or property, real or personal, which may have been acquired by means of such unfair competition, under the authority of Business and Professions Code section 17203;

5. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17200, in an amount according to proof but not less than $ 10,000,000, under the authority of Business and Professions Code section 17206;

6. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17500, in an amount according to proof but not less than $ 10,000,000, under the authority of Business and Professions Code section 17536;

7. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17200 perpetrated against a senior citizen or disabled person, in an amount according to proof but not less than $ 10,000,000, under the authority of Business and Professions Code section 17206.1;

8. That the Court assess a fine of not more than $10,000 against each Non-Attorney Defendant for each violation of Civil Code section 2945.4, in an amount according to proof but not less than $ 10,000,000, under the authority of Civil Code section 2945.7;

9. That the Court assess a fine of not less than $1,000 and not more than $25,000 against each Non-Attorney Defendant for each violation of Civil Code section 2945.45(a), in an amount according to proof, under the authority of subdivision (d) of Civil Code 2945.45;

10. That Plaintiff recovers its costs of suit, including costs of investigation; and

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11. For such other and further relief that the Court deems just, proper, and equitable.

Dated: July __, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANCES T. GRUNDER
Senior Assistant Attorney General
KATHRIN SEARS
Supervising Deputy Attorney General

By: _____
AMY C. TENG
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[EXEMPT FROM FILING FEES UNDER GOVT. CODE SEC. 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

RMR GROUP LOSS MITIGATION, LLC, a California limited liability company; LIVING WATER LENDING, INC., a California corporation; SHIPPEY & ASSOCIATES, P.C., a California professional corporation; MICHAEL SCOTT ARMENDARIZ, an individual; RUBEN CURIEL, an individual; RICARDO HAAG, an individual; KARLA C. SHIPPEY, an individual; ARTHUR S. ALDRIDGE, an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No.

COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., Attorney General of the State of California, alleges the following on information and belief:

1. This action is brought against Defendants, who regularly violate California law while preying on consumers facing foreclosure and the loss of their homes. Defendants have unlawfully charged customers up front fees (ranging in the thousands of dollars) while falsely promising to help them negotiate better mortgage terms from their lenders and to rescue them from foreclosure. Despite taking these exorbitant advance fees, Defendants provide little or no assistance to their customers.

2. As many other foreclosure rescue companies have done, in an attempt to avoid statutory prohibitions on collecting fees before any services have been rendered, Defendants have included one or more attorneys in their scheme. Noting the alarming trend in the number of complaints issued against attorneys involved with foreclosure rescue companies, the State Bar has issued an Ethics Alert cautioning attorneys from lending their names to loan modification companies when non-lawyers purportedly negotiate with the lenders on the customers' behalf but actually provide little to no services; meanwhile, the non-lawyers also collect fees from the consumers and provide distressed homeowners with reckless and harmful advice on how to deal with their lenders.

3. Numerous California consumers have fallen prey to Defendants' unlawful scam, losing thousands of dollars that could have been used toward mortgage payments or finding new housing. In this action, Plaintiff seeks an order permanently enjoining Defendants from engaging in their unlawful business practices, granting restitution for affected consumers, imposing civil penalties, and granting all other relief available under California law.

DEFENDANTS AND VENUE

4. Defendant RMR Group Loss Mitigation, LLC (RMR Group), is a California limited liability company with its principal place of business at 109 North Maple Street, Suite C, Corona, California 92880. Defendant RMR Group has also conducted business at 1318 East Shaw Avenue, Suite 200, Fresno, California 93711; 5011 Argosy Avenue, Suite 13, Huntington Beach, California 92648; and 780 West Town and Country Road, Orange, California 92868.

Defendant RMR Group is not a law corporation or licensed as a real estate broker or an entity authorized to make loans or extensions of credit. Defendant RMR Group operates a web site at www.rmrhope.com. At all relevant times, Defendant RMR Group has transacted and continues to transact business throughout California, including Orange County.

5. Defendant Living Water Lending, Inc. (Living Water Lending), is a California corporation with its principal place of business at 1200 Quail Street, Suite 260, Newport Beach, California 92660. Defendant Living Water Lending has also conducted business at 7777 Center Avenue, Suite 690, Huntington Beach, California 92647, and 2200 Hammer Avenue, Suite 103, Norco, California 92860. At all relevant times, Defendant Living Water Lending has transacted and continues to transact business throughout California, including Orange County. At all relevant times, Defendant Living Water Lending was a corporation licensed by the California Department of Real Estate (DRE).

6. Defendant Shippey & Associates is a California professional corporation with its principal place of business at 4506 E. La Palma Avenue, Anaheim, California 92807. Defendant Shippey & Associates has also conducted business at 4848 Lakeview Avenue, Suite E, Yorba Linda, California 92886. At all relevant times, Defendant Shippey & Associates has transacted and continues to transact business throughout California, including Orange County.

7. Defendant Michael Scott Armendariz (Armendariz), an individual, is a principal of RMR Group and Living Water Lending. Defendant Armendariz resides at 202 Memphis Avenue, Huntington Beach, California 92648. At all relevant times, Defendant Armendariz was a real estate broker licensed by DRE. Defendant Armendariz, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Armendariz has transacted and continues to transact business throughout California, including Orange County. Defendant Armendariz is a resident of Orange County.

8. Defendant Ruben Curiel (Curiel), an individual, is a principal of RMR Group. Curiel resides at 1821 Marion Avenue, Apartment 4, Lancaster, California 93535. Defendant Curiel, acting alone or in concert with others, has formulated, directed, controlled, authorized, or

participated in the acts and practices set forth in this Complaint. From January 26, 2007 to July 27, 2008, Defendant Curiel was a real estate salesperson licensed by DRE. On July 27, 2008, DRE conditionally suspended Defendant Curiel's salesperson license for failing to meet education requirements. At all relevant times, Defendant Curiel has transacted and continues to transact business throughout California, including Orange County.

9. Defendant Ricardo Haag (Haag), an individual, is a principal of RMR Group. Haag resides at 12961 Rae Court, Corona, California 92880. Defendant Haag, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. Defendant Haag is not an attorney and is not licensed as a real estate broker or person authorized to make loans or extensions of credit. At all relevant times, Defendant Haag has transacted and continues to transact business throughout California, including Orange County.

10. Defendant Karla C. Shippey (Shippey), an individual, is a licensed California attorney doing business at Defendant Shippey & Associates. Defendant Shippey lists her business address as 4506 East La Palma Avenue, Anaheim, California 92807. Defendant Shippey resides at 20754 Ivy Circle, Yorba Linda, California 92887. Defendant Shippey, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Shippey has transacted and continues to transact business throughout California, including Orange County. Defendant Shippey is a resident of Orange County.

11. Defendant Arthur Steven Aldridge (Aldridge), an individual, is a licensed California attorney. Defendant Aldridge lists his business address as P.O. Box 6893, Thousand Oaks, California 91359. Defendant Aldridge resides at 32040 Wallington Court, Westlake Village, California. At all relevant times, Defendant Aldridge was a real estate broker licensed by DRE. Defendant Aldridge, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Aldridge has transacted and continues to transact business throughout California, including Orange County.

12. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as Does 1 through 100, inclusive, presently are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to allege the true names of Does 1 through 100 when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named defendants participated in some or all of the acts alleged herein.

13. The defendants identified in Paragraphs 4 through 12 above are referred to collectively in this Complaint as the "Defendants."

14. At all times mentioned herein, each of the Defendants acted as the principal, agent, or representative of each of the other Defendants, and in doing the acts herein alleged, each Defendant was acting within the course and scope of the agency relationship with each of the other Defendants, and with the permission and ratification of each of the other Defendants.

15. At all relevant times, Defendants have controlled, directed, formulated, known and/or approved of, and/or agreed to the various acts and practices of each of the Defendants.

16. Whenever reference is made in this Complaint to any act of any Defendant or Defendants, such allegation shall mean that such Defendant or Defendants did the acts alleged in this Complaint either personally or through the Defendant's or Defendants' officers, directors, employees, agents and/or representatives acting within the actual or ostensible scope of their authority.

17. At all times mentioned herein, each Defendant knew that the other Defendants were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing that other Defendants were engaging in such unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts alleged in this Complaint, and thereby aided and abetted the other Defendants in the unlawful conduct.

18. Defendants have engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is and was to engage in the violations of law alleged in

this Complaint. The conspiracy, common enterprise, and common course of conduct continue to the present.

19. Whenever reference is made in this Complaint to any act of Defendants, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants named in that cause of action.

20. Each Defendant committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Additionally, some or all of the defendants acted as the agents of the other defendants, and all of the Defendants acted within the scope of their agency if acting as an agent of another.

21. The violations of law alleged in this Complaint occurred in Orange County and elsewhere throughout California and the United States.

DEFENDANTS' BUSINESS ACTS AND PRACTICES

22. Since at least Spring 2008, Defendants have advertised, marketed, offered for sale, and sold purported mortgage loan modification and foreclosure rescue services. As more particularly alleged below, Defendants engaged in a scheme to swindle distressed homeowners by enticing them to engage the Defendants to negotiate loan modifications with their respective lenders. Defendants falsely represented both their success rate in negotiating loan modifications for customers and the type of loan modification they could secure for homeowners, including lower, fixed interest rates, principal reductions, lower monthly payments, and forgiveness of arrears. Defendants market their services to homeowners who are in financial distress and in danger of losing their homes to foreclosure.

23. Defendant RMR Group is not licensed by DRE. None of the Defendants have submitted advance fee agreement applications and none of the Defendants have received the required response from DRE — known as "no objection" — allowing them to charge advance fees from consumers.

24. Defendants market and sell their loan modification services to consumers who are particularly vulnerable to fraud, including those 65 years of age or older.

25. Defendants also market and sell their loan modification services to Spanish-speaking consumers.

26. Before engaging Defendants' services, many of Defendants' customers had already defaulted on their mortgages by falling behind on their mortgage payments.

27. Defendants market and sell their loan modification services to consumers even when they are aware that a lender has recorded a notice of default on the consumer's home.

28. Defendants market and sell their loan modification services to consumers even when they are aware that a lender may have posted a notice of trustee sale on the consumer's property, which typically occurs three months after a notice of default has been recorded and notifies the homeowner that a sale will take place within 20 days.

29. Defendants solicit consumers for loan modification services in a number of ways, including advertising on the radio. The radio advertisements aired in both Spanish and English. In these advertisements, consumers were told that those suffering a financial hardship should contact their bank or the "help center" to "recover [their] home[s] today." The radio advertisements list a local telephone number for the "help center." Some of the radio advertisements particularly mention Defendant Aldridge by name and include his California bar license number. Some of the advertisements also mentioned a money-back guarantee. When consumers dial the telephone number listed, they are connected to Defendants and Defendants' representatives.

30. Defendants also solicited consumers through in-home solicitations.

31. When consumers speak to Defendants over the telephone or in person, they are told that Defendants have significant negotiating experience and success in negotiating with their particular lenders. Defendants also tell consumers that their success rate in modifying loans is 90%, 99%, or 100%. Defendants' representatives would tell potential customers that they did not personally know any customers who were not able to obtain loan modifications through Defendants. In fact, Defendants are unable to obtain loan modifications for most of their customers.

32. Despite the fact that they are unable to negotiate loan modifications for most of their customers, Defendants make the following false statements to the consumer after obtaining information about the prospective customer's mortgage:

(a) Defendants guarantee a loan modification for their customers;

(b) Defendants will be able to negotiate lower interest rates, including securing fixed rates for adjustable loans, from lenders;

(c) Defendants will be able to secure principal reductions of the consumer's mortgage;

(d) Defendants will be able to secure lower monthly mortgage payments for the consumer;

(e) Defendants will be able to eliminate a consumer's second mortgage through a loan modification;

(f) Defendants will be able to get the consumer's arrears forgiven by the consumer's lenders; and

(g) Defendants will be able to help consumers avoid foreclosures.

33. In some cases, Defendants have promised consumers that they could obtain interest rates in the range of 4%; conversion of adjustable rate loans to low fixed-rate loans; 50% principal reductions; and principal reductions of $100,000 or more. Based on Defendants' presentation of such favorable proposed terms, consumers are induced to sign contracts to engage Defendants' loan modification services.

34. Defendants tell consumers that the loan modification process may be completed as in as few as 4 to 6 weeks. In fact, most customers never obtain a loan modification from Defendants.

35. Defendants also tell consumers that if Defendants are unable to obtain a loan modification for them, they will be able to receive a refund of all fees paid (or, in some cases, minus a processing fee). This money-back guarantee was included in the radio advertisements. When customers request a refund, however, Defendants deny the request or do not respond at all.

36. Defendants also falsely tell consumers that attorneys affiliated with Defendants review customers' financial paperwork and also negotiate with the lenders on their behalf. Indeed, as a result of Defendants' solicitation, some of Defendants' customers are pressed by Defendants' representatives to sign or otherwise unwittingly sign contracts with Defendants Aldridge, Shippey, and Shippey & Associates, believing the contracts are with Defendant RMR Group. These contracts obligate consumers to pay Defendants Aldridge, Shippey, and Shippey & Associates a fee and authorize Defendants Aldridge, Shippey, and Shippey & Associates to hire the other Defendants, even though the consumer has never spoken with nor ever heard of Defendants Aldridge, Shippey, and Shippey & Associates. Customers are not given any opportunity to speak with or have any contact with any attorneys affiliated with Defendants about their loans, and neither Defendants Aldridge, Shippey, Shippey & Associates, nor any other attorneys affiliated with Defendants review customers' financial documents or negotiate with lenders on their behalf. Moreover, Defendants' customers are informed by their lenders that the lenders have not been contacted by Defendants Aldridge, Shippey, and Shippey & Associates, or any of their lawyers, on the customers' behalf.

37. While California's law defining and regulating foreclosure consultants under the Mortgage Foreclosure Consultant Act (the Act), as codified in Civil Code section 2945 *et seq*., includes exceptions for attorneys licensed to practice law in California when "render[ing] [foreclosure consultant] service in the course of his or her practice as an attorney at law" (Civil Code, § 2945.1(b)(1)), and while Defendants Aldridge and Shippey are attorneys licensed to practice law in California, the exemption does not apply here, nor do any of the exceptions set forth in the Act. Defendants Aldridge and Shippey do not perform (or claim to perform) foreclosure consultant services for consumers while also providing them with legal services.

38. Defendants improperly collect fees before completing all services they agree to provide to consumers.

39. Defendants' contracts with consumer are deficient in multiple ways, including but not necessarily limited to the following:

(a) Defendants do not include a notice, printed in at least 14-point boldface type, advising consumers that Defendants cannot take money until they have completely finished doing everything they say they would do, and that Defendants cannot make consumers sign any lien, deed of trust, or deed;

(b) Defendants fail to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants;

(c) Defendants do not always providing consumers with a notice of cancellation form prescribed by law;

(d) Defendants collect advance fees for loan modification services, even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 26 through 28 above; and

(e) Defendants are not registered with the Department of Justice as foreclosure consultants.

40. Defendants inform consumers that they will be acting as their agent and negotiator with their lenders. To that end and to control what is communicated to the lenders, Defendants instruct customers not to speak to their lenders about their financial circumstances and to avoid responding to any communications they received from the lender. Defendants instruct customers to forward all communications from the lender to Defendants. In this way, Defendants' customers are shut out of negotiations with their lender and depend on Defendants for information about the progress of their loan modifications. However, when Defendants fail to contact or remain in contact with their lenders, and the customers follow Defendants' advice and steadfastly refuse to communicate with their lenders, the lenders cancel or reject the loan modification application or rescind offers of modification altogether, due to the borrowers' perceived lack of interest or cooperation with the lenders.

41. Defendants require consumers to pay Defendants an upfront fee ranging from $ 2,000 to $ 3,600 before Defendants will render loan modification services. Many of the

distressed homeowners solicited do not have sufficient financial resources to make their mortgage payments at all, much less pay Defendants' upfront fee and continue making their mortgage payments.

42. Defendants inform consumers that they may suspend their mortgage payments (or continue to do so, as the case may be) while they have engaged Defendants for loan modification services. By doing so, consumers could then apply whatever money they would have normally used to make mortgage payments to pay Defendants' upfront fee. Defendants assure consumers that their lenders will either forgive these missed payments altogether or include them as part of a future modification agreement. Defendants also advise consumers that lenders will not modify mortgages that are not already in default, and that lenders will not be convinced that consumers are in financial distress until they actually fail to make their monthly mortgage payment. As a result, Defendants' customers, in reliance on this advice and assurance, miss mortgage payments or continue to do so. In fact, heeding this advice caused many customers to have their foreclosure proceeding accelerated by their lenders.

43. Defendants also prepare false financial statements that do not reflect their customers' actual income and expenses and submit the fraudulently modified information to lenders. Specifically, Defendants inflate income amounts or create additional income streams, while also reducing expenses and debts, so that the financial worksheet ultimately submitted to the lender reflects income greater than expenses. When their customers inquire about this practice, Defendants explain that it was to ensure the success of their loan modification application to the lender. In other instances, Defendants knowingly submit false information related to consumers' income and expenses to federally insured lenders without consumers' knowledge and/or permission.

44. Defendants and their representatives solicit and market their loan modification services to Spanish-speaking consumers in Spanish but present these consumers with English-language contracts to execute. Defendants and their representatives did not explain the contract terms to the Spanish-speaking consumers before they are asked to sign the documents. These

consumers do not receive Spanish-language copies of their contracts with Defendants either before or after signing the copies printed in English.

45. After Defendants receive the advance fee payments from customers, Defendants rarely remain in contact with them. While customers repeatedly call, e-mail, fax, or even visit Defendants' offices seeking updates on the status of their loan modification applications, Defendants regularly failed to respond to their inquiries.

46. In the instances where customers are able to make contact with Defendants and their agents, Defendants tell customers to remain patient because negotiations are proceeding normally with the lender. In other instances, Defendants tell customers that a modification agreement is imminent or that Defendants have finalized modification agreements with their lenders. These representations are false, and Defendants know they are false at the time they are stated.

47. In fact, despite assurances to their customers to the contrary, Defendants make very little effort to initiate contact or negotiate with lenders. Beyond forwarding to the lenders authorization forms signed by their customers allowing Defendants to discuss the consumers' loan with the lenders and sending the doctored financial worksheets that Defendants themselves drafted, Defendants make no attempt to seek a loan modification on behalf of their customers. Defendants' customers are informed by their lenders that the lenders have not been contacted by Defendants Aldridge, Shippey, and Shippey & Associates, or any of their lawyers, on the customers' behalf. This essentially represents the entirety of the actual services provided by Defendants.

48. When customers contact their lenders to confirm Defendants' statements about the progress of their modification application, their lenders tell them they received no communications from Defendants or, at most, that the only communication the lenders received from Defendants was the signed authorization form allowing Defendants to discuss the consumers' loan with the lenders and the financial worksheet. Often, the lenders try to contact Defendants for more information regarding their clients' loans to no avail.

49. After customers realize that Defendants are not going to provide assistance with a loan modification, the customers demand the promised refund of their fees. Defendants regularly deny these refund requests or promise customers refunds but then fail to return any funds.

50. Defendants fail to obtain for their customers the promised mortgage loan modifications that would lower their interest rates and/or principal. Instead, despite having paid thousands of dollars to Defendants to prevent such an occurrence, customers lose their homes to foreclosure or are forced to attempt to negotiate a modification with their lenders without any assistance from Defendants.

51. Consumers have suffered and continue to suffer substantial monetary loss to Defendants as a result of Defendants' unlawful acts and practices. Defendants have been unjustly enriched as a result of the unlawful practices set forth in this Complaint. Absent injunctive relief from the Court, Defendants are likely to continue to injure consumers and harm the public interest.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500

(UNTRUE OR MISLEADING REPRESENTATIONS)

52. Plaintiff realleges Paragraphs 1 through 51 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

53. Defendants have violated and continue to violate Business and Professions Code section 17500 by making or causing to be made untrue or misleading statements with the intent to induce members of the public to purchase Defendants' services, as described in Paragraphs 29 through 36. Defendants' untrue or misleading representations include, but are not limited to, the following:

(a) That Defendants' success rate in modifying loans is 90%, 99%, or 100%;

(b) That Defendants have significant negotiating experience and success with particular lenders;

(c) That Defendants guarantee a loan modification for customers;

(d) That Defendants will be able to secure lower interest rates, including fixed rates for adjustable loans, for customers;

(e) That Defendants will be able to secure principal reductions of the customers' mortgages;

(f) That Defendants will be able to secure lower monthly mortgage payments for customers;

(g) That Defendants will be able to eliminate a customer's second mortgage through a loan modification;

(h) That Defendants will be able to get customers' arrears forgiven by the customers' lenders;

(i) That Defendants will be able to help consumers avoid foreclosure;

(j) That there is a money-back guarantee and Defendants will refund the upfront fees that Defendants collected from their customers if they do not get a loan modification; and

(k) That attorneys affiliated with Defendants review the customers' financial paperwork and also negotiate with the lenders on their behalf.

54. At the time the representations set forth in Paragraph 53 were made, Defendants knew or by the exercise of reasonable care should have known that the representations were untrue or misleading.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

55. Plaintiff realleges Paragraphs 1 through 54 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

56. From a date specific unknown to Plaintiff and continuing to the present, Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Failing to perform on their promises, made in exchange for upfront fees from their customers, that Defendants would negotiate modifications of their mortgage loans and secure lower and/or fixed interest rates, principal reductions, and, in some cases, elimination of second mortgages. Defendants did little or nothing to help customers modify their mortgage loans. Instead, consumers, having already paid large sums of money to Defendants, lost their homes or were forced to attempt a loan modification on their own, as described in Paragraph 50 above;

(b) Luring customers into paying upfront fees with promises to refund all, or most, of the upfront fees if they do not get a loan modification. When customers learned that their lenders were unwilling to modify their loans, or that Defendants had done little or nothing to assist in a modification, they demanded the promised refund. Despite Defendants' promises, Defendants regularly denied customers' refund requests, as described in Paragraphs 35 and 49 above;

(c) Deceiving customers into believing that failing to contact their lenders, or evading their lenders' communications, would increase the odds that their modification applications would be successful. Customers relied on Defendants' advice because Defendants assured them that Defendants would remain in contact with lenders. In fact, Defendants were not in contact with lenders and lenders assumed that consumers were not willing to work with the lender to save their homes. Heeding Defendants' advice placed customers in even greater jeopardy of losing their homes, as described in Paragraph 40 above;

(d) Deceiving customers into believing that suspending mortgage payments, and diverting those funds to pay Defendants' upfront fees instead, would increase the odds that their modification application would be successful. Defendants also promised their customers that the missed mortgage payments would not endanger or adversely impact lenders' decisions on their modification applications or otherwise accelerate the foreclosure process. Defendants' advice placed consumers in even greater jeopardy of losing their homes, as described in Paragraphs 41 and 42 above;

(e) Negotiating with consumers in a language other than English, but requiring consumers to sign contracts printed in English, as described in Paragraph 44 above;

(f) Violating Penal Code section 487, by taking money of a value exceeding $400 from consumers by theft, as described in Paragraphs 41, 50, and 51 above;

(g) Violating Penal Code section 532, by knowingly and designedly obtaining consumers' money by false pretenses, as described in Paragraphs 32 and 41 above;

(h) Violating Civil Code section 1632 by negotiating foreclosure consultant contracts primarily in Spanish to Spanish-speaking consumers, but not providing a translation of the contract in that language before requiring the consumer to sign a contract printed in English, as described in Paragraph 44 above;

(i) Violating Business and Professions Code sections 6151 and 6152, by engaging in "running and capping," the practice of non-attorneys obtaining business for an attorney, as described in Paragraph 36 above;

(j) Violating Business and Professions Code section 6155, by Defendants RMR Group, Living Water Lending, Armendariz, Curiel, Haag, and Does 1-100 in directly or indirectly referring potential clients to Defendants Shippey, Aldridge, and Shippey Law Firm without seeking registration as a lawyer referral service by the State Bar, and by Defendants Shippey, Aldridge, and Shippey Law Firm in accepting referrals of such potential clients, as described in Paragraph 36 above;

(k) Violating 18 United States Code section 1014 and California Penal Code section 532a by knowingly submitting false statements regarding their customers' income and expenses in attempt to induce federally insured lenders to agree to modifications of the customers' mortgage loans, as described in Paragraph 43 above; and

(l) Violating Business and Professions Code section 17500, as more particularly alleged in Paragraphs 52 through 54 above.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS RMR GROUP, LIVING WATER LENDING, ARMENDARIZ, CURIEL, HAAG, AND DOES 1 THROUGH 50 (COLLECTIVELY NON-ATTORNEY DEFENDANTS)

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 (UNFAIR COMPETITION)

57. Plaintiff realleges Paragraphs 1 through 56 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

58. From a date specific unknown to Plaintiff and continuing to the present, Non-Attorney Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Violating Civil Code section 2945.3, subdivision (b) by not including the required notice in their contract, as described in Paragraph 39 above;

(b) Violating Civil Code section 2945.3, subdivision (d) by failing to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants, as described in Paragraph 39 above; and

(c) Violating Civil Code section 2945.3, subdivisions (e) and (f) by not always providing consumers with the Notice of Cancellation form required under the statute, as described in Paragraph 39 above.

FOURTH CAUSE OF ACTION AGAINST NON-ATTORNEY DEFENDANTS

VIOLATION OF SECTION 2945.4 OF THE CIVIL CODE

59. Plaintiff realleges Paragraphs 1 through 58 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

60. In addition to the conduct alleged as part of the Second and Third Causes of Action in this Complaint, Non-Attorney Defendants also violate subdivision (a) of section 2945.4 of the Civil Code by collecting advance fees for loan modification services even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders

had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 26 through 28 and Paragraph 39 above.

FIFTH CAUSE OF ACTION AGAINST NON-ATTORNEY DEFENDANTS

VIOLATION OF SECTION 2945.45 OF THE CIVIL CODE

61. Plaintiff realleges Paragraphs 1 through 60 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

62. In addition to the conduct alleged as part of the Second, Third, and Fourth Causes of Action in this Complaint, Non-Attorney Defendants also violate section 2945.45 of the Civil Code by failing to register with the Department of Justice as foreclosure consultants, as described in Paragraph 39 above.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS

SHIPPEY, ALDRIDGE, AND SHIPPEY LAW FIRM

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

63. Plaintiff realleges Paragraphs 1 through 62 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

64. In addition to the conduct alleged as part of the Second Cause of Action in this Complaint, Defendants Shippey, Aldridge, and Shippey Law Firm, as attorneys, have engaged in unfair competition as defined in Business and Professions Code section 17200 by engaging in acts and practices which include, but are not necessarily limited to:

(a) Violating the fiduciary duty and duties of good faith and fair dealing owed to their clients/customers by failing to review financial documents or negotiate with lenders on their behalf, as described in Paragraph 36 above;

(b) Violating California Rules of Professional Conduct, rule 1-320(A) by directly or indirectly sharing legal fees with a non-lawyer, as described in Paragraph 36 above;

(c) Violating California Rules of Professional Conduct, rule 1-320(B) by compensating persons or entities for the purpose of securing employment or as a reward for

having made a recommendation resulting in the employment of Defendants Shippey, Aldridge, and Shippey Law Firm by a client, as described in Paragraph 36 above;

(d) Violating California Rules of Professional Conduct, rule 1-300(A) by aiding persons or entities in the unauthorized practice of law, as described in Paragraph 36 above;

(e) Violating California Rules of Professional Conduct, rule 3-110(A) by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as described in Paragraph 36 above; and

(f) Violating California Rules of Professional Conduct, rule 4-200(A) by entering into an agreement for, charge, or collect an illegal or unconscionable fee, as described in Paragraph 36 above.

65. From a date specific unknown to Plaintiff and continuing to the present, Defendants Shippey, Aldridge, and Shippey Law Firm, and each of them, have aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Violating Civil Code section 2945.3, subdivision (b) by not including the required notice in their contract, as described in Paragraph 39 above;

(b) Violating Civil Code section 2945.3, subdivision (d) by failing to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants, as described in Paragraph 39 above;

(c) Violating Civil Code section 2945.3, subdivisions (e) and (f) by not always providing consumers with the Notice of Cancellation form required under the statute, as described in Paragraph 39 above; and

(d) Violating Civil Code section 2945.4, subdivision (a) by collecting advance fees for loan modification services even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 26 through 28 and Paragraph 39 above.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS

ARMENDARIZ, CURIEL, AND ALDRIDGE

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

66. Plaintiff realleges Paragraphs 1 through 65 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

67. In addition to the conduct alleged as part of the Second Cause of Action in this Complaint, Defendants Armendariz, Curiel, and Aldridge, as real estate professionals licensed at any time during the transactions alleged in this Complaint, engaged in unfair competition as defined in Business and Professions Code section 17200 by engaging in acts and practices which include, but are not necessarily limited to, violating the fiduciary duty and duties of good faith and fair dealing owed to their clients/customers by failing to negotiate with lenders on their behalf, as described in Paragraphs 40, 47, and 50 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That Defendants, their successors, agents, representatives, employees, assigns and all persons who act in concert with Defendants be permanently enjoined from making any untrue or misleading statements in violation of Business and Professions Code section 17500, including, but not limited to, the untrue or misleading statements alleged in this Complaint, under the authority of Business and Professions Code section 17535;

2. That Defendants, their successors, agents, representatives, employees, assigns and all persons who act in concert with Defendants be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, the acts and practices alleged in this Complaint, under the authority of Business and Professions Code section 17203;

3. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any Defendant of any practice which violates section 17500 of the Business and Professions Code, or which may be

necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any such practice, under the authority of Business and Professions Code section 17535;

4. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any Defendant of any practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition, under the authority of Business and Professions Code section 17203;

5. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17200, in an amount according to proof but not less than $ 7,500,000, under the authority of Business and Professions Code section 17206;

6. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17500, in an amount according to proof, but not less than $ 7,500,000, under the authority of Business and Professions Code section 17536;

7. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17200 perpetrated against a senior citizen or disabled person, in an amount according to proof but not less than $ 7,500,000, under the authority of Business and Professions Code section 17206.1;

8. That the Court assess a fine of not more than $10,000 against each Non-Attorney Defendant for each violation of Civil Code section 2945.4, in an amount according to proof but not less than $7,500,000, under the authority of Civil Code section 2945.7;

9. That the Court assess a fine of not less than $1,000 and not more than $25,000 against each Non-Attorney Defendant for each violation of Civil Code section 2945.45(a), in an amount according to proof, under the authority of subdivision (d) of Civil Code 2945.45;

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10. That Plaintiff recovers its costs of suit, including costs of investigation; and

11. For such other and further relief that the Court deems just, proper, and equitable.

Dated: July __, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANCES GRUNDER
Senior Assistant Attorney General
KATHRIN SEARS
Supervising Deputy Attorney General

By: _____
AMY C. TENG
Deputy Attorney General
Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA

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Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA

[EXEMPT FROM FILING FEES UNDER GOVT. CODE SEC. 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. STATEWIDE FINANCIAL GROUP, INC., a California corporation doing business as US HOMEOWNERS ASSISTANCE; US HOMEOWNERS PRESERVATION CENTER, INC., a California corporation; HAKIMULLAH SARPAS, an individual; ZULMAI NAZARZAI, an individual; SHARON FASELA, an individual; RASHA YEHIA MELEK, an individual; and DOES 1 through 100, inclusive, Defendants.	Case No. **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., Attorney General of the State of California, alleges the following on information and belief:

1. This action is brought against Defendants, who regularly violate California law while preying on consumers facing foreclosure and the loss of their homes. Defendants have unlawfully charged customers up front fees (ranging in the thousands of dollars) while falsely promising to help them negotiate better mortgage terms from their lenders and to rescue them from foreclosure. Despite taking these exorbitant advance fees, Defendants provide little or no assistance to their customers.

2. Numerous California consumers have fallen prey to Defendants' unlawful scam, losing thousands of dollars that could have been used toward mortgage payments or finding new housing. In this action, Plaintiff seeks an order permanently enjoining Defendants from engaging in their unlawful business practices, granting restitution for affected consumers, imposing civil penalties, and all other relief available under California law.

DEFENDANTS AND VENUE

3. Defendant Statewide Financial Group, Inc. (Statewide Financial), is a California corporation with its principal place of business at 2575 McCabe Way, Suite 240, Irvine, California 92614. At all relevant times, Defendant Statewide Financial does business under the names US Homeowners Assistance (USHA), We Beat All Rates, and Homeowner Preservation Center of America. Defendant Statewide Financial is not a law corporation or licensed as a real estate broker or an entity authorized to make loans or extensions of credit. Defendant Statewide Financial operates a web site at www.webeatallrates.com. At all relevant times, Defendant Statewide Financial has transacted and continues to transact business throughout California, including Orange County.

4. Defendant US Homeowners Preservation Center, Inc. (US Homeowners Preservation), is a California corporation with its principal place of business at 2575 McCabe Way, Suite 240, Irvine, California 92614. Defendant US Homeowners Preservation is not a law corporation or licensed as a real estate broker or an entity authorized to make loans or extensions

of credit. At all relevant times, Defendant US Homeowners Preservation Center has transacted and continues to transact business throughout California, including Orange County.

5. Defendant Hakimullah "Sean" Sarpas (Sarpas), an individual, is a principal of Defendants Statewide Financial and US Homeowners Preservation. According to a Statement of Information filed with the Secretary of State on February 14, 2007, Defendant Sarpas was the Chief Executive Officer, Secretary, and Director of Defendant Statewide Financial. Defendant Sarpas resides at 266 Quail Meadows, Irvine, California 92603. Defendant Sarpas, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all relevant times, Defendant Sarpas was a real estate salesperson licensed by the California Department of Real Estate (DRE). At all relevant times, Defendant Sarpas has transacted and continues to transact business throughout California, including Orange County. Defendant Sarpas is a resident of Orange County.

6. Defendant Zulmai Nazarzai (Nazarzai), an individual, is a principal of Defendant Statewide Financial. According to a Statement of Information filed with the Secretary of State on February 14, 2007, Defendant Nazarzai was the Chief Financial Officer and Director of Defendant Statewide Financial. Defendant Nazarzai resides at 13712 Onkayha Circle, Irvine, California 92620. Defendant Nazarzai, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. Defendant Nazarzai is not an attorney and is not licensed as a real estate broker or person authorized to make loans or extensions of credit. At all relevant times, Defendant Nazarzai has transacted and continues to transact business throughout California, including Orange County. Defendant Nazarzai is a resident of Orange County.

7. Defendant Sharon Fasela (Fasela), an individual also known as Fasela Sheren, is an employee of Statewide Financial doing business as USHA. Defendant Fasela resides at 22771 La Vina Drive, Mission Viejo, California. Defendant Fasela, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. Defendant Fasela is not an attorney and is not licensed as a real estate broker or person authorized to make loans or extensions of credit. At all relevant times,

Defendant Fasela has transacted and continues to transact business throughout California, including Orange County. Defendant Fasela is a resident of Orange County.

8. Defendant Rasha Yehia Melek (Melek), an individual, is an employee of Statewide Financial doing business as USHA. Defendant Melek resides at 6956 Shamrock Lane, Rancho Cucamonga, California 91701. Defendant Melek, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this Complaint. Defendant Melek is not an attorney and is not licensed as a real estate broker or person authorized to make loans or extensions of credit. Defendant Melek has an expired real estate salesperson license issued by DRE. At all relevant times, Defendant Melek has transacted and continues to transact business throughout California, including Orange County

9. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as Does 1 through 100, inclusive, presently are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to allege the true names of Does 1 through 100 when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named defendants participated in some or all of the acts alleged herein.

10. The defendants identified in Paragraphs 3 through 9 above are referred to collectively in this Complaint as the "Defendants."

11. At all times mentioned herein, each of the Defendants acted as the principal, agent, or representative of each of the other Defendants, and in doing the acts herein alleged, each Defendant was acting within the course and scope of the agency relationship with each of the other Defendants, and with the permission and ratification of each of the other Defendants.

12. At all relevant times, Defendants have controlled, directed, formulated, known and/or approved of, and/or agreed to the various acts and practices of each of the Defendants.

13. Whenever reference is made in this Complaint to any act of any Defendant or Defendants, such allegation shall mean that such Defendant or Defendants did the acts alleged in this Complaint either personally or through the Defendant's or Defendants' officers, directors,

employees, agents and/or representatives acting within the actual or ostensible scope of their authority.

14. At all times mentioned herein, each Defendant knew that the other Defendants were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing that other Defendants were engaging in such unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts alleged in this Complaint, and thereby aided and abetted the other Defendants in the unlawful conduct.

15. Defendants have engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is and was to engage in the violations of law alleged in this Complaint. The conspiracy, common enterprise, and common course of conduct continue to the present.

16. Whenever reference is made in this Complaint to any act of Defendants, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants named in that cause of action.

17. Each Defendant committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Additionally, some or all of the defendants acted as the agents of the other defendants, and all of the Defendants acted within the scope of their agency if acting as an agent of another.

18. The violations of law alleged in this Complaint occurred in Orange County and elsewhere throughout California and the United States.

DEFENDANTS' BUSINESS ACTS AND PRACTICES

19. Since at least June 2007 to present, Defendants operated primarily under the name US Homeowners Assistance and USHA.

20. Since at least June 2007, Defendants have advertised, marketed, offered for sale, and sold purported mortgage loan modification and foreclosure rescue services. As more particularly alleged below, Defendants engaged in a scheme to swindle distressed homeowners by enticing them to engage the Defendants to negotiate loan modifications from the homeowners'

respective lenders. Defendants falsely represented both their success rate in negotiating loan modifications for customers and the type of loan modification they could secure for homeowners, including lower, fixed interest rates, principal reductions, lower monthly payments, and forgiveness of arrears. Defendants market their services to homeowners who are in financial distress and in danger of losing their homes to foreclosure.

21. Defendant Statewide Financial and Defendant US Homeowners Preservation are not licensed by DRE. None of the Defendants have submitted advance fee agreement applications and none of the Defendants have received the required response from DRE — known as "no objection" — allowing them to charge advance fees to consumers.

22. Defendants market and sell their loan modification services to consumers who are particularly vulnerable to fraud, including the disabled and/or those 65 years of age or older.

23. Before engaging Defendants' services, many of Defendants' customers had already defaulted on their mortgages by falling behind on their mortgage payments.

24. Defendants market and sell their loan modification services to consumers even when they are aware that a lender has recorded a notice of default on the consumer's home.

25. Defendants market and sell their loan modification services to consumers even when they are aware that a lender may have posted a notice of trustee sale on the consumer's property, which typically occurs three months after a notice of default has been recorded and notifies the homeowner that a sale will take place within 20 days.

26. Defendants solicit consumers for loan modification services in a number of ways, including advertising on radio and direct mailings. Through these advertisements, consumers are told that no matter how dire their housing situation, Defendants can offer a solution to allow them to keep their homes. The advertisements list a toll-free number for them to call for more information.

27. Defendants also post press releases on the Internet. In one such press release, Defendants claimed that USHA was a governmental agency "on the front end of the war against foreclosures" that was "currently seeking alliance with other government agencies to help homeowners save or modify their current bad loan." In another press release, Defendants claimed

that USHA was a non-profit agency "in the business of helping the borrowers as well as the banks." USHA is neither a governmental agency nor a non-profit organization.

28. At times, Defendants told consumers that USHA was approved by the government to provide loan modification services and that USHA was working with the Obama administration to help consumers save their homes. The United States Department of Housing and Urban Development (HUD) has not certified USHA has an approved housing counselor.

29. Defendants also solicited consumers through telemarketing.

30. Defendants are not currently registered as telephonic sellers in the State of California.

31. When consumers speak to Defendants over the telephone or in person, they are told that Defendants have significant negotiating experience and success in negotiating with their particular lenders. Defendants also represented to consumers that their success rate in modifying loans was 90%, 95%, or even 98%. In fact, Defendants are unable to obtain loan modifications for most of their customers.

32. Despite the fact that they are unable to negotiate loan modifications for most of their customers, Defendants make the following false statements to the consumer after obtaining information about the prospective customer's mortgage:

(a) Defendants guarantee a loan modification for their customers;

(b) Defendants will be able to negotiate lower interest rates, including securing fixed rates for adjustable loans, from lenders;

(c) Defendants will be able to secure principal reductions of the consumer's mortgage;

(d) Defendants will be able to secure lower monthly mortgage payments for the consumer;

(e) Defendants will be able to eliminate a consumer's second mortgage through a loan modification; and

(f) Defendants will be able to get the consumer's arrears forgiven by their lenders.

33. In some cases, Defendants have promised consumers that they could obtain principal reductions of 20% or more (leading to promises of principal reductions of $100,000 or more) and reductions of monthly payments by $200 or more. Based on Defendants' promises of such favorable terms, consumers are induced to sign contracts to engage Defendants' loan modification services.

34. Defendants tell consumers that the loan modification process may be completed in as few as 30 days or between 30 and 60 days. In reality, however, most customers never obtain a loan modification.

35. Defendants also tell consumers that if Defendants are unable to obtain a loan modification for them, they will be able to receive a refund of fees paid (or, in some cases, minus a processing fee). Defendants have even told customers that their lenders would refund their money at closing. In the majority of cases, however, customers who request refunds are denied them by Defendants, or Defendants fail to respond to the refund requests.

36. Defendants also falsely state to consumers that attorneys affiliated with Defendants review customers' financial paperwork and also negotiate with the lenders on their behalf. In reality, however, customers are not given any opportunity to speak with or have any contact with any attorneys affiliated with Defendants about their loans, and no attorneys affiliated with Defendants review customers' financial documents or negotiate with lenders on their behalf. Moreover, Defendants' customers are told by their lenders that the lenders have not been contacted by Defendants or any of Defendants' representatives on the customers' behalf.

37. Defendants tell consumers that they will be acting as their agent and negotiator with their lenders. To that end and to control what is communicated to the lenders, Defendants instruct customers not to speak to their lenders about their financial circumstances and to avoid responding to any communications they receive from the lender. Defendants instruct customers to forward all communications from the lender to Defendants. In this way, Defendants' customers are shut out of negotiations with their lender and depend on Defendants for information about the progress of their loan modifications. However, when Defendants fail to contact or remain in contact with their lenders, and the customers proceed under the Defendants'

advice and steadfastly refuse to communicate with their lenders, the lenders cancel or reject the loan modification application altogether, due to the borrowers' perceived lack of interest or cooperation with the lenders.

38. Defendants require consumers to pay Defendants an upfront fee ranging from $ 1,200 to $ 3,500 before Defendants will render loan modification services. Many of the distressed homeowners solicited do not have sufficient financial resources to make their mortgage payments at all, much less pay Defendants' upfront fee and continue making their mortgage payments.

39. Defendants inform consumers that they may suspend their mortgage payments (or continue to miss payments, as the case may be) while they have engaged Defendants for loan modification services. By doing so, consumers could then apply whatever money they would have normally used to make mortgage payments to pay Defendants' upfront fee. Defendants assure consumers that their lenders will either forgive these missed payments altogether or include them as part of a future modification agreement. Defendants also advise consumers that lenders will not modify mortgages that are not already in default, and that lenders will not be convinced that consumers are in financial distress until they actually fail to make their monthly mortgage payment. As a result, Defendants' customers, in reliance on this advice and assurance, miss mortgage payments or continue to do so. In fact, heeding this advice causes many customers to have their foreclosure proceeding accelerated by their lenders.

40. Defendants also prepare false financial statements that do not reflect their customers' actual income and expenses and submit the fraudulently modified information to lenders. Defendants counsel their customers that Defendants will determine how much the customers can afford and draft the financial worksheets to submit to the lenders. In doing so, Defendants invariably inflate income amounts or create additional income streams, while also reducing expenses and debts — in some cases flagrantly inventing income and debt streams and amounts — such that the financial worksheet ultimately submitted to the lender reflects the debtor's inability to pay the current loan amount. In some instances, Defendants knowingly

submitted false information related to consumers' income and expenses to federally insured lenders without consumers' knowledge and/or permission.

41. Defendants improperly collect fees before completing all services they agree to provide to consumers.

42. Defendants' contracts with consumer are deficient in multiple ways, including but not necessarily limited to the following:

(a) Defendants do not include a notice, printed in at least 14-point boldface type, advising consumers that Defendants cannot take money until they have completely finished doing everything they say they would do, and that Defendants cannot make consumers sign any lien, deed of trust, or deed;

(b) Defendants fail to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants;

(c) Defendants do not always providing consumers with a notice of cancellation form prescribed by law;

(d) Defendants collect advance fees for loan modification services, even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 23 through 25 above; and

(e) Defendants are not registered with the Department of Justice as foreclosure consultants.

43. After Defendants receive the advance fee payments from customers, Defendants rarely remain in contact with them. While customers repeatedly call, e-mail, or fax Defendants seeking updates on the status of their loan modification applications, Defendants regularly fail to respond to their inquiries.

44. In the instances where customers are able to make contact with Defendants and their agents, Defendants tell customers to remain patient because negotiations were proceeding normally with the lender. In other instances, Defendants tell customers that a modification

agreement is imminent or that Defendants have, in fact, finalized modification agreements with their lenders. These representations are false and Defendants know they are false at the time they are stated.

45. In fact, despite assurances to their customers to the contrary, Defendants make very little effort to initiate contact or negotiate with lenders. Beyond forwarding to the lenders authorization forms signed by their customers allowing Defendants to discuss the consumers' loan with the lenders and sending the doctored financial worksheets that the Defendants themselves drafted, Defendants make no attempt to seek a loan modification on behalf of their customers. This essentially represents the entirety of the actual services provided by Defendants.

46. When customers contact their lenders to confirm Defendants' statements about the progress of their modification application, lenders tell them that they received no communications from Defendants; or at most, that the only communication the lenders received from Defendants was the signed authorization form allowing Defendants to discuss the consumers' loan with the lenders and the financial worksheet. Many times, the lenders will try to contact Defendants for more information regarding their clients' loans to no avail.

47. After customers realize that Defendants are not going to provide assistance with a loan modification, the customers demand the promised refund of their fees, and Defendants regularly deny these refund requests.

48. Defendants fail to obtain for their customers the promised mortgage loan modifications that would lower their interest rates and/or principal. Instead, despite having paid thousands of dollars to Defendants to prevent such an occurrence, their customers lose their homes to foreclosure, or must secure a short sale, or are forced to attempt to negotiate a modification with their lenders without any assistance from Defendants.

49. Consumers have suffered and continue to suffer substantial monetary loss to Defendants as a result of Defendants' unlawful acts and practices. Defendants have been unjustly enriched as a result of the unlawful practices set forth in this Complaint. Absent injunctive relief from the Court, Defendants are likely to continue to injure consumers and harm the public interest.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500

(UNTRUE OR MISLEADING REPRESENTATIONS)

50. Plaintiff realleges Paragraphs 1 through 49 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

51. Defendants have violated and continue to violate Business and Professions Code section 17500 by making or causing to be made untrue or misleading statements with the intent to induce members of the public to purchase Defendants' services, as described in Paragraphs 26 through 36 above. Defendants' untrue or misleading representations include, but are not limited to, the following:

(a) That Defendants are a governmental agency;

(b) That Defendants are a non-profit organization;

(c) That Defendants had been approved by the government to provide loan modification services and were working with the Obama administration to help consumers save their homes;

(d) That Defendants' success rate in modifying loans is 90%, 95%, or 98%;

(e) That Defendants have significant negotiating experience and success with particular lenders;

(f) That Defendants guarantee a loan modification for customers;

(g) That Defendants will be able to secure lower interest rates, including fixed rates for adjustable loans, for customers;

(h) That Defendants will be able to secure principal reductions of the customers' mortgages;

(i) That Defendants will be able to secure lower monthly mortgage payments for customers;

(j) That Defendants will be able to eliminate a customer's second mortgage through a loan modification;

(k) That Defendants will be able to get customers' arrears forgiven by the customers' lenders;

(l) That the upfront fees that Defendants collect from their customers is refundable when in fact Defendants do not refund the charge; and

(m) That attorneys affiliated with Defendants review the customers' financial paperwork and also negotiate with the lenders on their behalf.

52. At the time the representations set forth in Paragraph 51 were made, Defendants knew or by the exercise of reasonable care should have known that the representations were untrue or misleading.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

53. Plaintiff realleges Paragraphs 1 through 52 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

54. From a date specific unknown to Plaintiff and continuing to the present, Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to conspire to engage in acts or practices that constitute unfair competition as defined in Business and Professions Code section 17200. Such acts or practices include, but are not limited to, the following:

(a) Failing to perform on their promises, made in exchange for upfront fees from their customers, that Defendants would negotiate modifications of their mortgage loans and secure lower and/or fixed interest rates, principal reductions, and, in some cases, elimination of second mortgages. Defendants do little or nothing to help customers modify their mortgage loans. Instead, consumers, having already paid large sums of money to Defendants, lose their homes or are forced to attempt a loan modification on their own, as described in Paragraph 48 above;

(b) Luring customers into paying upfront fees with promises to refund all, or most, of the upfront fees if the modification is unsuccessful. When customers learn that their lenders are unwilling to modify their loans, or that Defendants have done little or nothing to

obtain a modification, they demand the promised refund. Despite Defendants' promises, Defendants regularly deny customers' refund requests, as described in Paragraphs 35 and 47 above;

(c) Deceiving their customers into believing that failing to contact their lenders, or evading their lenders' communications, will increase their ability to obtain a loan modification. Customers rely on Defendants' advice because Defendants assure them that Defendants will remain in contact with lenders. In fact, Defendants are not in contact with lenders and lenders assume that consumers are not willing to work with them to save their homes. Heeding Defendants' advice places customers in even greater jeopardy of losing their homes, as described in Paragraph 37 above;

(d) Deceiving their customers into believing that suspending mortgage payments and diverting those funds to pay Defendants' upfront fees instead will increase their ability to obtain a loan modification. Defendants also promise their customers that the missed mortgage payments will not endanger or adversely impact lenders' decisions on their modification applications or otherwise accelerate the foreclosure process. Defendants' advice places consumers in even greater jeopardy of losing their homes, as described in Paragraphs 38 and 39 above;

(e) Deceiving their customers by claiming that Defendants have been approved by the government to provide loan modification services and are working with the Obama administration to help consumers save their homes, as described in Paragraph 28 above;

(f) Violating Penal Code section 487, by taking money of a value exceeding $400 from consumers by theft, as described in Paragraphs 38, 48, and 49 above;

(g) Violating Penal Code section 532, by knowingly and designedly obtaining consumers' money by false pretenses, as described in Paragraphs 32 and 38 above;

(h) Violating 18 United States Code section 1014 and California Penal Code section 532a by knowingly submitting false statements regarding their customers' income and expenses to induce federally insured lenders to agree to modify the customers' mortgage loans, as described in Paragraph 40 above;

(i) Violating section 17533.6 of the Business and Professions Code by soliciting payment for services by means of a mailing, e-mail, or web site containing a seal or insignia that can be construed as implying any state or local government connection, approval, or endorsement, when Defendants are not governmental entities, as described in Paragraphs 27 and 28 above;

(j) Violating section 17511.3 of the Business and Professions Code by failing to register as a telephonic seller prior to utilizing the telephone to conduct sales of its loan modification services, as described in Paragraphs 29 and 30 above;

(k) Violating subdivision (b) of section 2945.3 of the Civil Code by not including the required notice in their contract, as described in Paragraph 42 above;

(l) Violating subdivision (d) of section 2945.3 of the Civil Code by failing to include in their contracts the address where a consumer may send notice of cancellation of the contract with Defendants, as described in Paragraph 42 above;

(m) Violating subdivisions (e) and (f) of section 2945.3 of the Civil Code by not always providing consumers with the Notice of Cancellation form required under the statute, as described in Paragraph 42 above; and

(n) Violating Business and Professions Code section 17500, as more particularly alleged in Paragraphs 50 through 52 above.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATION OF SECTION 2945.4 OF THE CIVIL CODE

55. Plaintiff realleges Paragraphs 1 through 54 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

56. In addition to the conduct alleged as part of the Second Cause of Action in this Complaint, Defendants also violate subdivision (a) of section 2945.4 of the Civil Code by collecting advance fees for loan modification services even when the consumers they solicited for services had already defaulted on their mortgage obligations, lenders had recorded notices of default against the consumers' properties, and/or lenders had issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 23 through 25 and Paragraph 42 above.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATION OF SECTION 2945.45 OF THE CIVIL CODE

57. Plaintiff realleges Paragraphs 1 through 56 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

58. In addition to the conduct alleged as part of the Second and Third Causes of Action in this Complaint, Defendants also violate section 2945.45 of the Civil Code by failing to register with the Department of Justice as foreclosure consultants, as described in Paragraph 42 above.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS SARPAS AND MELEK

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(UNFAIR COMPETITION)

59. Plaintiff realleges Paragraphs 1 through 58 and incorporates these Paragraphs by reference as though they were fully set forth in this cause of action.

60. In addition to the conduct alleged as part of the Second, Third, and Fourth Causes of Action in this Complaint, Defendants Sarpas and Melek, as real estate professionals licensed at any time during the transactions alleged in this Complaint, engaged in unfair competition as defined in Business and Professions Code section 17200 by engaging in acts and practices which include, but are not necessarily limited to, violating the fiduciary duty and duties of good faith and fair dealing owed to their clients/customers by failing to negotiate with lenders on their behalf, as described in Paragraphs 43, 45, and 48 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That Defendants, their successors, agents, representatives, employees, assigns and all persons who act in concert with Defendants be permanently enjoined from making any untrue or misleading statements in violation of Business and Professions Code section 17500, including, but not limited to, the untrue or misleading statements alleged in this Complaint, under the authority of Business and Professions Code section 17535;

2. That Defendants, their successors, agents, representatives, employees, assigns and all persons who act in concert with Defendants be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, the acts and practices alleged in this Complaint, under the authority of Business and Professions Code section 17203;

3. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any Defendant of any practice which violates section 17500 of the Business and Professions Code, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any such practice, under the authority of Business and Professions Code section 17535;

4. That the Court make such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any Defendant of any practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition, under the authority of Business and Professions Code section 17203;

5. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17200, in an amount according to proof but not less than $ 7,500,000, under the authority of Business and Professions Code section 17206;

6. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17500, in an amount according to proof but not less than $ 7,500,000, under the authority of Business and Professions Code section 17536;

7. That the Court assess a civil penalty of $2,500 against each Defendant for each violation of Business and Professions Code section 17200 perpetrated against a senior citizen or disabled person, in an amount according to proof but not less than $ 7,500,000, under the authority of Business and Professions Code section 17206.1;

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8. That the Court assess a fine of not more than $10,000 against each Defendant for each violation of Civil Code section 2945.4, in an amount according to proof but not less than $ 7,500,000, under the authority of Civil Code section 2945.7;

9. That the Court assess a fine of not less than $1,000 and not more than $25,000 against each Defendant for each violation of Civil Code section 2945.45(a), in an amount according to proof, under the authority of subdivision (d) of Civil Code 2945.45;

10. That Plaintiff recovers its costs of suit, including costs of investigation; and

11. For such other and further relief that the Court deems just, proper, and equitable.

Dated: July __, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANCES T. GRUNDER
Senior Assistant Attorney General
KATHRIN SEARS
Supervising Deputy Attorney General

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THE PEOPLE OF THE STATE OF CALIFORNIA

[redacted]

COALITION FOR MORTGAGE INDUSTRY SOLUTIONS ("CMIS")
www.cmismortgagecoalition.org

Coalition for Mortgage Industry Solutions (CMIS)

The Work of the Coalition:

The Coalition for Mortgage Industry Solutions (CMIS) provides a unique forum in which leaders from across the mortgage, finance and credit industries can work together and take a leading role in defining meaningful and viable solutions for the welfare and benefit of their industries, the economy and the consumer. The coalition acts to convert all related industry and consumer, diverse and conflicting self-interests, into comprehensive workable solutions, legislative and regulatory initiatives.

MortgageOrb Interview with Richard Ivar Rydstrom, Esq., Chairman, CMIS

Q: What was the reason for creating the Coalition for Mortgage Industry Solutions?
Rydstrom: The mortgage, finance and credit industries are becoming increasingly fragmented with disparate interests - from regulators and enforcement agencies to politicians and interest groups - trying to shape their future. The Coalition for Mortgage Industry Solutions provides a unique forum in which leaders from across these industries can work together and take a leading role in defining meaningful and viable solutions for the welfare and benefit of their industries, the economy and the consumer. The coalition converts all related industry and consumer diverse and conflicting self-interests into comprehensive workable solutions, legislative and regulatory initiatives. The coalition also acts as an arbiter for conflicting self interests.

Q: How does this coalition differ from other coalitions or trade associations related to the mortgage industry?

Rydstrom: The coalition is the first to step up and offer a centralized forum for all related and conflicting self-interest trade associations or interests arising from industry, consumer, regulatory and legislative initiatives. The coalition will invite all related associations, industry and consumer leaders to join and participate. The coalition will bring together the brightest and the best minds to explore solutions and refinements. The Coalition for Mortgage Industry Solutions operates as a reconciliation clearing house for the mortgage, finance and credit industries, its consumers and related governmental, regulatory and legislative interests or priorities. Its goal is to convert conflicting self interests into comprehensive solutions for all participants, and act as a depot and arbiter of critical issues, solutions, information, education and coordination. There is no other organization that offers this comprehensive function to the mortgage, finance, and credit industries. The Coalition for Mortgage Industry Solutions is the first to offer these solutions to a diverse set of interests. The coalition also provides a unique opportunity for these diverse

interests to work collaboratively within a neutral setting, permitting an unparalleled opportunity to work constructively and proactively. At a time when consumers, investors, and regulators are seeking answers from industry leaders, coalition members will be considered "part of the solution" to the serious challenges we are confronting.

Q: What will be the coalition's short-term goals and long-term goals?

Rydstrom: In the short term, for example, the coalition will deal with the related conflicting authority precluding effective and efficient loss mitigation and loan modifications, including related investor, servicer, REMIC, capital, credit and related secondary market issues as well as reconciliation of bankruptcy, foreclosure and alternatives. This will assist the heart of the industry, as well as its consumer, the homeowner. The coalition will also explore new solutions or refinements for the affordability- and liquidity-related issues. Additionally, the coalition will explore new safe harbor solutions that may allow industry and consumers to opt in to solutions that resolve conflicting interests, and serve both the economic and liability uncertainty issues facing all related parties, including but not limited to the servicer, investor, trusts, lender, borrower, etc.

The coalition will hold a summit on June 17 in Washington, D.C., for related industry, congressional, regulatory and consumer group leaders to vet and participate in defining the immediate and short-term issues facing the mortgage, credit and capital market concerns. The coalition will provide the forum and framework to immediately begin the coordination of working groups in fashioning solutions to these diverse sets of interests. For the intermediate and longer term, but starting in first order, the coalition will provide the forum and framework to allow related industry, congressional, regulatory and consumer group leaders to vet and participate in defining intermediate and longer-term concerns, including but not limited to reconciliation of international and domestic "fair value" accounting conflicts, sustainability of homeownership, safeguards in structured finance, the banking system and credit rating systems, new and innovative products for loan origination, refinance and credit enhancements, etc.

THE CMIS EXECUTIVE LEADERSHIP DC SUMMIT OF JUNE 17 2008
COALITION FOR MORTGAGE INDUSTRY SOLUTIONS ("CMIS")

In the face of mounting challenges and growing concerns facing the nation's economy, a new coalition of mortgage, finance, and credit industry professionals came together June 17 2008 in DC for the COALITION FOR MORTGAGE INDUSTRY SOLUTIONS ("CMIS") Executive Leadership Summit to address pending and potential regulatory and litigation activities. The goal was to help bring about a new slate of governmental and private-sector solutions. *In addition to the many critical matters debated, Richard Rydstrom in discussions with Wilbur Ross notably explored the development of solutions to yield lower monthly payments to borrowers through principal reduction or forgiveness programs – at a time when many refused to consider such a path. In 2009 we are pleased to see that the HAMP and H4H programs promulgated principal reduction or forgiveness solutions to help the borrower achieve affordability.*

The 2008 CMIS DC Summit in Review: The CMIS Summit was a great success and actually put its finger on the pulse of the solutions which are now front and center before us with the implementation of the HAMP and H4H programs. As reported, principal reduction and forgiveness, the borrower's 'ability to pay' and tax regulations relating to modifying securitized loans were key issues explored at the Summit. We are grateful for the participation of so many esteemed industry, government, and congressional leaders, guests and speakers including **Wilbur Ross, Congressman Thaddeus McCotter, Robert Klein, Marc Morial, William LeRoy, Rick Sharga, Richard Neiman, Douglas Duncan, , R.K. Arnold, Laurie Maggiano, Andrew Jakabovics, Andrew Sherman, Bruce Dorpalen, Henry Hildebrand III, Debra Miller, Steve Horne, George Stevenson, Carolyn Taylor, Patricia Hasson, Francis Creighton, and Judge Raymond Lyons** (etc.), all of whom identified problems and offered best practices and solutions in various fields including principal reduction and forgiveness modifications, capital markets, securitization, loss mitigation, foreclosure, bankruptcy, REOs, property preservation, and related legislation (www.cmismortgagecoalition.org).

> **MortgageOrb: A Case For Conversation**
> John Clapp, Wednesday 18 June 2008 - 21:59:56
>
> **Mortgage industry players who convened in Washington, D.C.**, this week for the Coalition for Mortgage Industry Solutions' (CMIS) Executive Leadership Summit saw firsthand an example of what founding chairman Richard Ivar Rydstrom was hoping to accomplish with the newly formed group. "[CMIS'] goal is to convert conflicting self-interests into comprehensive solutions for all participants, and act as a depot and arbiter of critical issues, solutions, information, education and coordination," he told MortgageOrb last month ("Person Of The Week: Richard Rydstrom And A New Coalition Of The Willing"). Although it's too early in the game to say whether the coalition will succeed in achieving cures for the industry's myriad ailments, there is little doubt among summit attendees that conflicting self-interests were indeed brought to the

table.During a summit panel session titled “Charting a Future Course – The Case for Self-Regulation,” the topic of trustee-servicer relationships was raised – an issue that panel moderator William LeRoy, CEO of the American Legal and Financial Network, noted has been cause for a whirlpool of discussion for more than five years. Despite the lengthy conversation that has already surrounded this sensitive issue, the two sides still admittedly seem worlds away from compromise. Nonetheless, the coalition appears intent on facilitating further dialogue. The panel - which included Chapter 13 trustees, a U.S. Bankruptcy Court judge and a representative from the Mortgage Bankers Association’s Legislative Affairs committee, among others - fiercely debated the merits of making certain servicing best practices (as organized in list form by the trustees) agreed-upon rules. Within moments of scanning the list, Francis P. Creighton, vice president of legislative affairs for the MBA, pinpointed one best practice and possible rule-to-be – the dedication of a phone line by servicing outfits to trustees – as impractical for some smaller-sized MBA member banks. Trustees George W. Stevenson, Debra L. Miller and Henry E. Hildebrand countered by saying that, in many cases of bankruptcy, the process is delayed (and, in turn, losses are increased) by a communication breakdown that could be alleviated, or maybe eliminated altogether, by the inclusion of dedicated phone lines.After several minutes of a lively back-and-forth, moderator LeRoy chimed in cheerfully and reminded those in attendance that this kind of conversation - open, honest and not always without conflicting points of view - is precisely what the industry needs to move forward in the hope of stabilizing the current market, aiding troubled homeowners and avoiding a similar dislocation in the future. Regardless of the end decision pertaining to the dedicated-phone line issue, whatever it may be, the need for servicers to become involved in the regulatory rulemaking process now - rather than fight the rules once they’re formed – is clearly of great importance. The Honorable Raymond T. Lyons, U.S. Bankruptcy Court, District of New Jersey, urged servicers to be proactive and assist courts in creating a uniform set of standards with which they can comply. Creighton, at the panel’s end, said he would share with MBA member servicers the bestpractice list for review. While CMIS’ ability to bring these diverse parties to the same table is admirable, is it much different than the conversations that have been going on for five years? Well, quite possibly.In closing the summit, Rydstrom stressed that CMIS will strive to provide more than simply lip service, and during the event, the formation of four task forces was announced (see "CMIS Launches Task Forces").Of particular interest to servicers concerned with the aforementioned best practicesturned-rules issue may be the Comprehensive Legal Authorities & Practices task force, for which LeRoy and Rydstrom will serve as co-chairs. This task force, according to the CMIS press release, will focus upon “identifying federal, state, local and practice barriers to cooperation and reconciliation of conflicting … authorities and practices to respond to the housing crisis.” Everyone’s in agreement - cooperation is not only beneficial, but absolutely necessary. Now, if only getting all the parties to agree on the nuances would be so easy.

2009 CMISFocus eMagazine™

In 2009 CMIS launched its online CMISfocus eMagazine™ which has received great praise in the industry for its insightful topics and in-depth issue exploration. See www.cmismortgagecoalition.org or www.cmisfocus.com .

Taxation, Securitization & Safe Harbors: With respect to the tax regulation issues, we are pleased to report that changes in regulations now offer a more obtainable safe harbor for modifying securitized loans. Chairman Rydstrom submitted tax analysis comment papers to Treasury on the proposed regulations and was quoted on the final regulations on April 13, 2009 in the preeminent national tax policy and news publication, Tax Analysts Tax Notes (Tax.Org). See Fighting for Best Practices for the Servicer to Help the Borrower; New Treasury/IRS Notice 2009-36 and Rev. Proc. 2009-23, IRC 860 G (d)(1), 860 G (d)(2), 860 F(a)(2), etc., and Articles at: www.procouncil.com/html/articles.html: Article of April 10, 2009 Mortgage Modification Safe-Harbors? HAMP, Are We There Yet?; CMIS Focus™ eMagazine: Q1 2009 Issue at: www.cmisfocus.com .

HAMP Principal Reduction or Forgiveness Key: With respect to the principal reduction or forgiveness issues, implementation of the President's HAMP program which is ***now a public policy priority*** of Treasury, will reveal that most of the mortgages sought to be modified under HAMP (or refinanced under H4H (HR 3221 and S 896)) **will require principal reduction or forgiveness** to reach the 'ability to pay' goals set out since we have a substantial value gap (in loan to value) and restrictive HAMP (100 % LTV) guidelines that would require reduction or forgiveness. The June 2008 CMIS Executive Leadership Summit in DC made news on proposed principal reduction and forgiveness techniques offered by Wilbur Ross in a discussion held by CMIS Chairman, Richard Rydstrom. Similar techniques are now part of the debate and implementation of President Obama's HAMP program. Permission is now present in the HAMP waterfall that would allow principal reduction or forgiveness to be applied in the waterfall calculation sequentially or initially (with sequential priority) to reach borrower affordability goals (or Front-End 31% DTI goals). The issue of whether a lender/holder would voluntarily incur the loss write-off, capital and covenant impairments remain. The issue of Back-End DTI (55%) remains a key concern to achieving a ***lower re-default rate*** of modified loans under HAMP (or H4H). The HAMP implementation solution will now turn on whether or not principal reduction or forgiveness will or can be implemented, and whether or not legacy banks, lenders and servicers (or outsourcing) can implement or afford to implement the new Treasury *Draft Servicing Guidelines* (July 20, 2009) within the timeline now requested. The principal reduction or forgiveness solution was introduced at the 2008 CMIS DC Summit by Wilbur Ross and CMIS Chairman Richard Rydstrom in terms of claw-back and (insured salable) shared appreciation devices such as various shared appreciation modifications or mortgages. See Quarantined Built In Equity Shared Appreciation Modification™ at www.qbiesam.com , Article of April 10, 2009 Mortgage Modification Safe-Harbors? HAMP, Are We There Yet? - See CMIS Focus™ eMagazine:Q1 2009 Issue at: www.cmisfocus.com .

2009 CMIS Awards

On July 23, 2009 the Coalition for Mortgage Industry Solutions ("CMIS") presented its 2009 CMIS Awards to its esteemed recipients at the AFN 7th Annual Leadership Conference held July 21-24, 2009 at the Hyatt Regency Tamaya Resort & Spa Santa Ana Pueblo, NM. CMIS Chairman, Richard Rydstrom, made the following statements at the conference and in presenting the 2009 CMIS Awards:

> Some of us complain about problems, some of us act to resolve them. Some of us hate adversaries; some of us embrace them, and reconcile differences. We must all be open-minded and step-up to find comprehensive solutions. We are all in this together. This is our profession; this is our economy; this is our country. We must all participate in resolution together.
>
> **CMIS has chosen 4 AFN members for special recognition for their efforts to fashion solutions in the industry:**
>
> For his tireless efforts to bring the industry a reconciled and positive voice, the *2009 CMIS Lifetime Achievement & Visionary Award* is presented to **William M. LeRoy**, President and Chief Executive Officer, American Legal and Financial Network (AFN);
>
> For his extraordinary initiative to reconcile local, state and national rules, ordinances, guidelines and laws in the field of REOs and Property Preservation, the *2009 CMIS Leadership & Visionary Award* is presented to **Robert Klein**, CEO, Safeguard Properties;
>
> For her insightful, consistent, and reliable contributions in legal analysis of ever-changing laws and cases in the disciplines of foreclosure and bankruptcy law, the *2009 CMIS Award for Excellence in Foreclosure & Bankruptcy Law* is presented to **Carolyn A. Taylor**, Partner HughesWattersAskanase;
>
> For her discerning and dependable legal analysis of ever-changing laws and cases in the disciplines of foreclosure and bankruptcy law, the *2009 CMIS Award for Excellence in Foreclosure & Bankruptcy Law* is presented to **Cynthia A. Nierer**, Rosicki, Rosicki & Associates, P.C.

What's next for the Coalition?

For 2009-2010, CMIS is forming **task forces** to explore best practices and solutions for court structured mediation (state and national issues), REO and property preservation best practices (local, state and national issues), rapid implementation of the HAMP program under recent Treasury Guidelines with litigation risk mitigation, new industry technology solutions, a new properly aligned incentivized framework that resolves conflicting interests in securitization and PSA structures, including investor tranche warfare and servicer and investor inherent conflicts, and accounting standards and conflicts (international and United States). To submit articles, position papers, case and law analysis, or to participate in our task forces, please email us at: info@cmismortgagecoalition.org

CMIS will host a series of joint and individual presentations & workshops at the AFN's 8th Annual Leadership Conference on July 18-21, 2010 at the Grand Hyatt Washington, Washington, D.C.

The Work of the Coalition

The Coalition for Mortgage Industry Solutions (**CMIS**) provides a unique forum in which leaders from across the mortgage, finance and credit industries can work together and take a leading role in defining meaningful and viable solutions for the welfare and benefit of their industries, the economy and the consumer. The coalition acts to convert all related industry and consumer, diverse and conflicting self-interests, into comprehensive workable solutions, legislative and regulatory initiatives.

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CMIS Summit Handbook &
CMIS Information, Executive Bios & Policy
www.cmismortgagecoalition.org

CMIS Executive Leadership Summit 2008
Available Webcast through AFN

About CMIS
http://www.cmismortgagecoalition.org/html/about_cmis_.html

The Coalition for Mortgage Industry Solutions
CMIS
www.cmismortgagecoalition.org

# # #

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Gentle-persons, as you know on June 17th, our organization participated in the Coalition for Mortgage Industry Solutions ("CMIS") inaugural event, which was held in Washington D.C. The event was a great success and CMIS' work continues in the form of several task forces. Our organization filmed the event in its entirety. The film it now ready for viewing and it gives me great pleasure to announce that the Webcast will be available for viewing on September 24, 2008 at 8 AM EST and will be available "On-Demand" through Friday, September 26, 2008.

The Coalition for Mortgage Industry Solutions provides a unique forum in which leaders from across these industries can work together and take a leading role in defining meaningful and viable solutions for the welfare and benefit of their industries, the economy, and the consumer. The Coalition converts all related industry and consumer diverse and conflicting self-interests into comprehensive workable solutions, legislative and regulatory initiatives. The Coalition also acts as an arbiter for conflicting self interests.

The Coalition is the first to step up and offer a centralized forum for all related and conflicting self interest trade associations or interests arising from industry, consumer, regulatory, and legislative initiatives. The Coalition will invite all related associations, industry and consumer leaders to join and participate. The Coalition will bring together the brightest and the best minds to explore solutions and refinements.

In addition, the Coalition for Mortgage Industry Solutions operates as a reconciliation clearing house for the mortgage, finance and credit industries, its consumers, and related governmental, regulatory and legislative interests or priorities. Its goal is to convert conflicting self-interests into comprehensive solutions for all participants, and act as a depot and arbiter of critical issues, solutions, information, education, and coordination.

Schedule & Speakers

As the event consumes the better part of a full day, we have determined to break the broadcast down into it various component parts. The breakdown for CMIS Webcast is as follows:

1. Introduction/ Welcome - (30min) Overview of the Crisis and State of the Marketplace

· Michael E. Nannes, Chairman, Dickstein Shapiro, LLP

· Richard Rydstrom, Esq., CMIS

· Andrew Sherman, General Counsel, CMIS

2. Keynote: w/Richard Rydstrom moderating (30min)

· Wilbur L. Ross, Jr. , Chairman & CEO, WL Ross & Co. LLC

3. Panel One: Impact on Capital Markets, Financial Institutions, Consumer and Communities (1hr)

· Moderator: David W. Dworkin, CEO and Founder, Affiniti Network Strategies, LLC

· Douglas G. Duncan, Vice President and Chief Economist, Fannie Mae

· Richard H Neiman, Superintendent of Banks, New York State Banking Department

· Rick Sharga, Vice President Marketing, RealtyTrac, Inc.

4. Luncheon Keynote Speaker (45 min)

· Marc H. Morial, President and CEO, National Urban League, former Mayor, City of New Orleans, Former President of the U.S. Conference of Mayors

5. Panel Two: Loss Mitigation- Workouts that Work (and Those that Don't) (1hr)

· Moderator: Richard Rydstrom, Esq., CMIS

· Bruce Dorpalen, Co-Founder, Director of Housing Counseling, ACORN Housing Corporation

· Arnold Gulkowitz, Partner, Bankruptcy Practice, Dickstein Shapiro, LLP

· Patricia A. Hasson, President, Consumer Credit Counseling Services of Delaware

· Steve Horne, President, Wingspan Portfolio Advisors, LLC

· Andrew Jakabovics, Associate Director for the Economic Mobility Program, Center for American Progress

· Laurie Maggiano, Deputy Director, Office of Single family Asset management, U.S. Department of Housing and Urban Development

6. Panel Three: Charting a Future Course- The Case for Self- Regulation (1hr 15min)

· Moderator: William LeRoy, CEO, American Legal and Financial Network (AFN)

· R.K. Arnold, President and CEO MERSCORP, Inc.

· Francis P. Creighton, Vice President of Legislative Affairs, Mortgage Bankers Association

· Henry E. "Hank" Hildebrand, Chapter 13 Trustee

· Robert Klein, Chief Executive Officer, Safeguard Properties

· Hon. Raymond T. Lyons, U.S. Bankruptcy Court, District of New Jersey

· Debra L. Miller, Chapter 13 Trustee

· George W. Stevenson, Chapter 13 and 7 Trustee

· Carolyn A. Taylor, Partner, Hughes, Watters & Askanase, LLP

7. Closing Keynote (15 min)

· Congressman Thaddeus McCotter (MI-11)

In closing, I want to say thank you to our members who sponsored and attended this important event and that I hope that this Webcast will prove enlightening and informative to all of its viewers.

Best Regards,

William LeRoy

CEO, American Legal & Financial Network (AFN)

Senate Bill No. 94

CHAPTER 630

An act to amend Sections 10026, 10085, 10133.1, and 10177 of, to add Section 10147.6 to, and to add and repeal Sections 6106.3 and 10085.6 of, the Business and Professions Code, to amend Section 2945.1 of, to add Section 2944.6 to, and to add and repeal Section 2944.7 of, the Civil Code, and to amend Section 22161 of the Financial Code, relating to mortgage loans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 94, Calderon. Mortgage loans.

(1) The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. The California Finance Lenders Law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. The California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and servicers by the Commissioner of Corporations. The Banking Law provides for the regulation of state commercial banks by the Commissioner of Financial Institutions. The California Credit Union Law provides for the regulation of state credit unions by the Commissioner of Financial Institutions. A willful violation of specified provisions of those acts is a crime.

This bill would, until January 1, 2013, prohibit any person, including a real estate licensee, who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications or other forms of mortgage loan forbearance, as specified, for a fee or other compensation paid by a borrower, from demanding or receiving any preperformance compensation, as specified, requiring any security as collateral for final compensation, or taking a power of attorney from a borrower, and would make a violation of that prohibition a misdemeanor or subject to specified fines. By creating a new crime, the bill would impose a state-mandated local program.

This bill would also provide that these provisions do not apply to actions taken by a person who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, including, but not limited to, collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan.

This bill would also require any person, including a real estate licensee, who negotiates, attempts to negotiate, arranges, attempts to arrange, or

otherwise offers to perform residential mortgage loan modifications or other forms of mortgage loan forbearance, as specified, for a fee or other compensation paid by a borrower, to provide a specified 14-point bold type statement regarding loan modification fees. The bill would make a violation of that prohibition a misdemeanor or subject to specified fines, thereby creating a new crime and imposing a state-mandated local program. The bill would also provide that a real estate licensee who fails to comply with specified provisions related to mortgages, including the loan modification provisions, would be subject to disciplinary action by the Real Estate Commissioner, and would provide that a violation of the above by an attorney may also subject him or her to disciplinary action. The bill would add to the California Finance Lenders Law a prohibition on making a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering a loan.

Because a willful violation of these provisions by certain licensees may be punished as crimes under their respective licensing laws, this bill would impose a state-mandated local program.

(2) The Real Estate Law provides for the regulation and licensure of real estate brokers and salespersons by the Real Estate Commissioner. As used in the Real Estate Law, the term "advance fee" is defined as a fee that is claimed, demanded, charged, received, collected, or contracted from a principal for a listing, advertisement, or offer to sell or lease property, and as specified.

This bill would redefine the term "advance fee" to mean a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed, as specified.

Existing law authorizes the commissioner to require that materials used in obtaining advance fee agreements, as defined, be submitted to him or her at least 10 calendar days before the materials are used and makes it a misdemeanor, punishable by a fine not exceeding $1,000, or imprisonment in the county jail not exceeding 6 months, or both, to use any agreement that the commissioner has ordered not to be used.

This bill would increase the maximum fine for using any advance fee agreement that the commissioner has ordered not to be used from $1,000 to $2,500.

(3) Existing law provides that certain persons are exempt from regulation under certain provisions of the Real Estate Law dealing with real estate loans.

This bill would further exempt from those provisions specified organizations that have been approved by the United States Department of Housing and Urban Development to provide counseling services, when those services are provided at no cost and in connection with residential mortgage loan modifications.

(4) Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, and imposes regulations upon foreclosure consultants when servicing a foreclosure sale, as specified. Existing law excludes specified persons from the definition of a foreclosure consultant, including a person licensed under the Real Estate Law when making a direct loan or engaging in specified acts, and a person licensed to make loans as a finance lender, subject to the authority of the Commissioner of Corporations to terminate this exclusion, as specified.

This bill would instead specify that a real estate licensee and a finance lender are excluded from the definition of a foreclosure consultant when acting under the authority of that person's license, and would delete the commissioner's authority to terminate the finance lender's exclusion. The bill would also delete obsolete statutory references from those provisions.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 6106.3 is added to the Business and Professions Code, to read:

6106.3. (a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 or 2944.7 of the Civil Code.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Section 6106.3 is added to the Business and Professions Code, to read:

6106.3. (a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 of the Civil Code.

(b) This section shall become operative on January 1, 2013.

SEC. 3. Section 10026 of the Business and Professions Code is amended to read:

10026. The term "advance fee" as used in this part is a fee, regardless of the form, claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this section.

The term applies to a fee for a listing, advertisement or offer to sell or lease property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, or soliciting borrowers or lenders for, or to negotiate loans on, business opportunities or real estate. As used in this section, "advance fee" does not include "security" as that term is used in Section 1950.5 of the Civil Code, or a "screening fee" as that term is used in Section 1950.6 of the Civil Code. This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections.

SEC. 4. Section 10085 of the Business and Professions Code is amended to read:

10085. The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication.

The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.

Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided.

SEC. 5. Section 10085.6 is added to the Business and Professions Code, to read:

10085.6. (a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 6. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code, that is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Office of Thrift Supervision of the United States Department of the Treasury by its regulations, when acting under the authority of that written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(10) Any person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

(11) Any organization that has been approved by the United States Department of Housing and Urban Development pursuant to Section 106(a)(1)(iii) of the federal Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701x), to provide counseling services, or an employee of such an organization, when those services are provided at no cost to the borrower and are in connection with the modification of the terms of a loan secured directly or collaterally by a lien on residential real property containing four or fewer dwelling units.

(b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less, in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

(c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage

loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.

(2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.

This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.

SEC. 7. Section 10147.6 is added to the Business and Professions Code, to read:

10147.6. (a) Any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other form of compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

(b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Section 1632 of the Civil Code, a translated copy of the statement in subdivision (a) shall be provided to the borrower in that foreign language.

(c) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(d) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

SEC. 8. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the

Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(*l*) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

SEC. 9. Section 2944.6 is added to the Civil Code, to read:

2944.6. (a) Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

(b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Section 1632, a translated copy of the statement in subdivision (a) shall be provided to the borrower in that foreign language.

(c) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(d) This section does not apply to a person, or an agent acting on that person's behalf, offering loan modification or other loan forbearance services for a loan owned or serviced by that person.

(e) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

SEC. 10. Section 2944.7 is added to the Civil Code, to read:

2944.7. (a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, from doing any of the following:

(1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.

(2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.

(3) Accepting payment from a federal agency in connection with the federal Making Home Affordable Plan or other federal plan intended to help borrowers refinance or modify their loans or otherwise avoid foreclosures.

(d) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 11. Section 2945.1 of the Civil Code is amended to read:

2945.1. The following definitions apply to this chapter:

(a) "Foreclosure consultant" means any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) Stop or postpone the foreclosure sale.

(2) Obtain any forbearance from any beneficiary or mortgagee.

(3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.

(4) Obtain any extension of the period within which the owner may reinstate his or her obligation.

(5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.

(6) Assist the owner to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.

(8) Save the owner's residence from foreclosure.

(9) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence.

(b) A foreclosure consultant does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney at law.

(2) A person licensed under Division 3 (commencing with Section 12000) of the Financial Code when the person is acting as a prorater as defined therein.

(3) A person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the person is acting under the authority of that license, as described in Section 10131 or 10131.1 of the Business and Professions Code.

(4) A person licensed under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code when the person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or his or her authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services.

(6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien.

(7) Any person licensed to make loans pursuant to Division 9 (commencing with Section 22000) of the Financial Code when the person is acting under the authority of that license.

(8) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, insurance companies, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in the business of these persons or entities.

(9) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(c) Notwithstanding subdivision (b), any person who provides services pursuant to paragraph (9) of subdivision (a) is a foreclosure consultant unless he or she is the owner's attorney.

(d) "Person" means any individual, partnership, corporation, limited liability company, association or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) Debt, budget, or financial counseling of any type.

(2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure.

(3) Contacting creditors on behalf of an owner of a residence in foreclosure.

(4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his or her default and reinstate his or her obligation pursuant to Section 2924c.

(5) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure.

(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court.

(7) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

(8) Arranging or attempting to arrange for the payment by the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, of the remaining proceeds to which the owner is entitled from a foreclosure sale of the owner's residence in foreclosure. Arranging or attempting to arrange for the payment shall include any arrangement where the owner transfers or assigns the right to the remaining proceeds of a foreclosure sale to the foreclosure consultant or any person designated by the foreclosure consultant, whether that transfer is effected by agreement, assignment, deed, power of attorney, or assignment of claim.

(f) "Residence in foreclosure" means a residence in foreclosure as defined in Section 1695.1.

(g) "Owner" means a property owner as defined in Section 1695.1.

(h) "Contract" means any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (e).

SEC. 12. Section 22161 of the Financial Code is amended to read:

22161. (a) No person shall make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering the loan.

(b) No person shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

With foreclosures at historic levels, foreclosure rescue scams are pervasive and rampant. In order to prevent financially stressed homeowners from being victimized and to provide them with needed protection at the earliest possible time, it is necessary that this act take effect immediately.

O

The State Bar of California

Senate Bill No. 94: Prohibition on Advance Fees; and Required Notice

FAQs

On October 11, 2009, SB 94 (Calderon) was chaptered. The legislation took effect immediately. The full text of the legislation can be found on the Official California Legislative Information Web site.

Prohibition against Collection of Advance Fees

The legislation prohibits the collection of advance fees for loan modifications, as specified. Among other provisions, new Civil Code Section 2944.7(a)(1) provides as follows:

> "Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

Civil Code Section 2944.7(d) provides that Section 2944.7 applies only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Under new Business and Professions Code Section 6106.3(a), it constitutes cause for the imposition of discipline of an attorney for an attorney to engage in any conduct in violation of Civil Code Section 2944.7.

The State Bar's interpretation of the new statutory language, in response to the three most common questions it has received, is set forth below. The State Bar's Office of the Chief Trial Counsel will enforce the statutory language consistent with this interpretation.

1. Is Civil Code Section 2944.7(a)(1) retroactive?

Agreements entered into and advance fees collected prior to October 11, 2009 are not affected. Advance fees based on agreements entered into prior to October 11, 2009, but collected after October 11, 2009, must be fully refunded.

2. Is it a violation of Civil Code Section 2944.7(a)(1) to collect an advance fee, place that fee into a client trust account, and not draw against that fee until the services have been fully performed?

Yes. The statutory language of the prohibition uses the word "receive" and the plain meaning of that term is broad enough to encompass a lawyer's receipt of advance fees into a trust account. Civil Code Section 2944.7(a)(1) makes it unlawful to "collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform," whether the compensation is placed into the lawyer's client trust account, general account or any other type of account.

3. Is it a violation of Civil Code Section 2944.7(a)(1) to ask for or collect a "retainer"?

Civil Code Section 2944.7(a)(1) makes it unlawful to "[c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform," even if that compensation is called a "retainer."

Required Notice to Borrower

The legislation also requires that specified notice be provided to the borrower, as a separate statement, prior to entering into any fee agreement with the borrower. Among other provisions, new Civil Code Section 2944.6(a) provides as follows:

> "Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:
>
> It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov."

Civil Code Section 2944.6(b) provides that if loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Civil Code Section 1632, a translated copy of the required statement must be provided to the borrower in that foreign language.

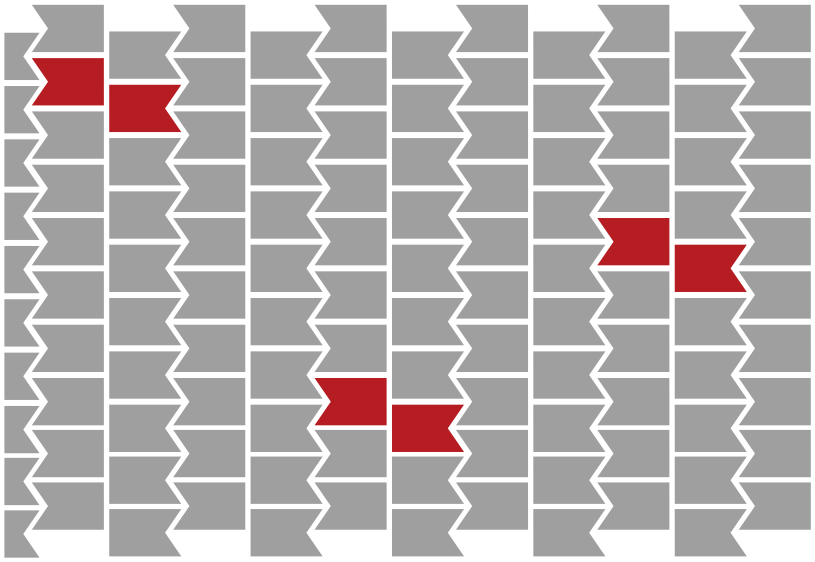
Civil Code Section 2944.6(e) provides that Section 2944.6 applies only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Under new Business and Professions Code Section 6106.3(a), it constitutes cause for the imposition of discipline of an attorney for an attorney to engage in any conduct in violation of Civil Code Section 2944.6.

Federal Trade Commission
Protecting America's Consumers

FIGHTING FRAUD WITH THE RED FLAGS RULE

A How-To Guide for Business



FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW, Washington, DC 20580
1–877–FTC–HELP (1–877–382–4357)
ftc.gov/redflagsrule

FIGHTING FRAUD WITH THE RED FLAGS RULE

A How-To Guide for Business

As many as nine million Americans have their identities stolen each year. Identity thieves may drain their accounts, damage their credit, and even endanger their medical treatment. The cost to businesses – left with unpaid bills racked up by scam artists – can be staggering, too.

The "Red Flags" Rule, in effect since January 1, 2008, requires many businesses and organizations to implement a written Identity Theft Prevention Program designed to detect the warning signs – or "red flags" – of identity theft in their day-to-day operations, take steps to prevent the crime, and mitigate the damage it inflicts.[1] By identifying red flags in advance, they will be better equipped to spot suspicious patterns when they arise and take steps to prevent a red flag from escalating into a costly episode of identity theft.

The Red Flags Rule is enforced by the Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration. If you work for a bank, federally chartered credit union, or savings and loan, check with your federal regulatory agency for guidance. Otherwise, this booklet has tips for determining if you are covered by the Rule and guidance for designing your Identity Theft Prevention Program.

THE RED FLAGS RULE
An Overview

The Red Flags Rule sets out how certain businesses and organizations must develop, implement, and administer their Identity Theft Prevention Programs. Your Program must include four basic elements, which together create a framework to address the threat of identity theft.[2]

First, your Program must include reasonable policies and procedures to identify the "red flags" of identity theft you may run across in the day-to-day operation of your business. Red flags are suspicious patterns or practices, or specific activities, that indicate the possibility of identity theft.[3] For example, if a customer has to provide some form of identification to open an account with your company, an ID that looks like it might be fake would be a "red flag" for your business.

Second, your Program must be designed to detect the red flags you've identified. For example, if you've identified fake IDs as a red flag, you must have procedures in place to detect possible fake, forged, or altered identification.

Third, your Program must spell out appropriate actions you'll take when you detect red flags.

Fourth, because identity theft is an ever-changing threat, you must address how you will re-evaluate your Program periodically to reflect new risks from this crime.

Just getting something down on paper won't reduce the risk of identity theft. That's why the Red Flags Rule sets out requirements on how to incorporate your Program into the daily operations of your business. Your board of directors (or a committee of the board) has to approve your first written Program. If you don't have a board, approval is up to an appropriate senior-level employee. Your Program must state who's responsible for implementing and administering it effectively. Because your employees have a role to play in preventing and detecting identity theft, your Program also must include appropriate staff training. If you outsource or subcontract parts of your operations that would be covered by the Rule, your Program also must address how you'll monitor your contractors' compliance.

The Red Flags Rule gives you the flexibility to design a Program appropriate for your company – its size and potential risks of identity theft. While some businesses and organizations may need a comprehensive Program that addresses a high risk of identity theft in a complex organization, others with a low risk of identity theft could have a more streamlined Program.

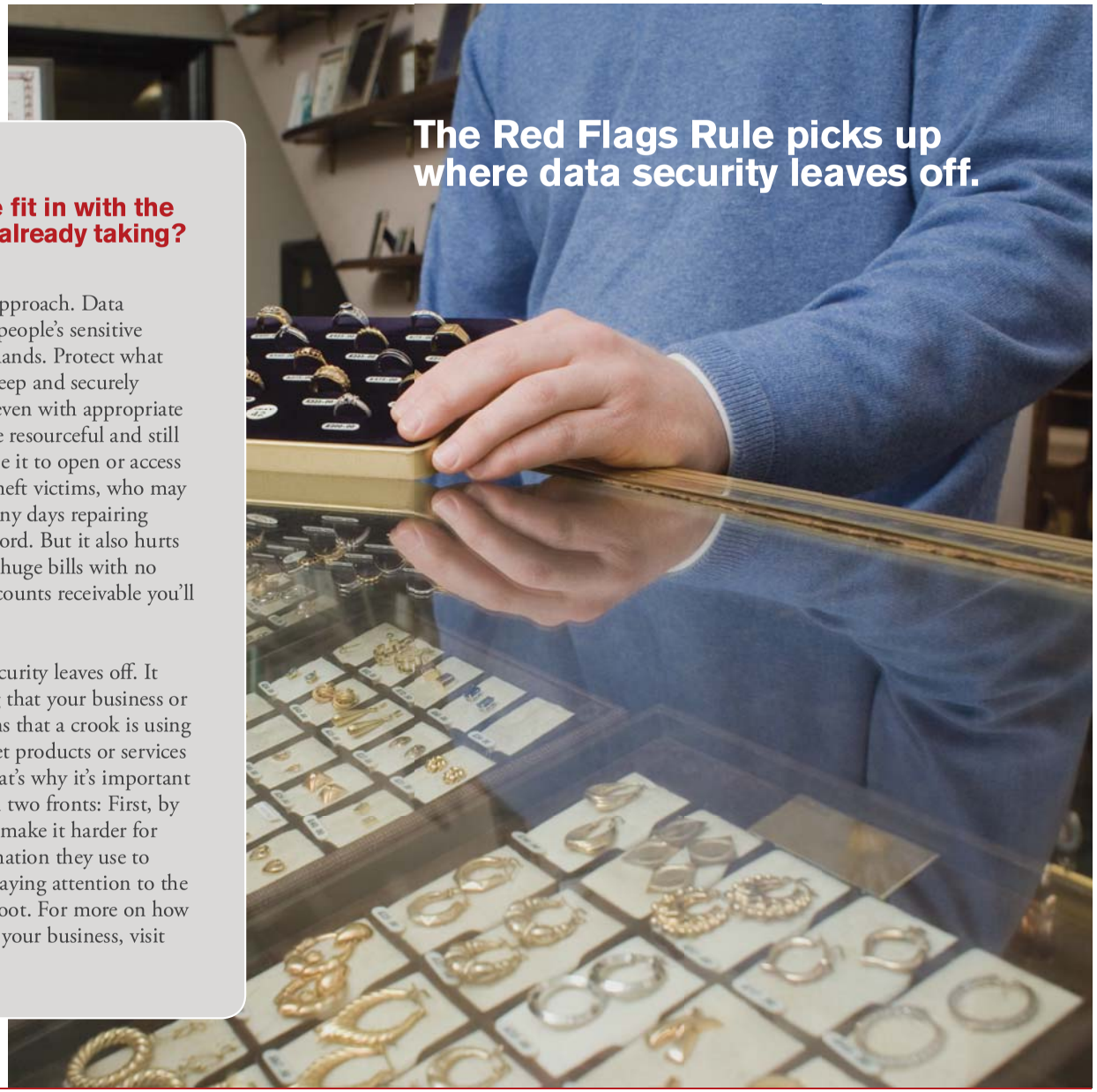
? **QUESTION:**

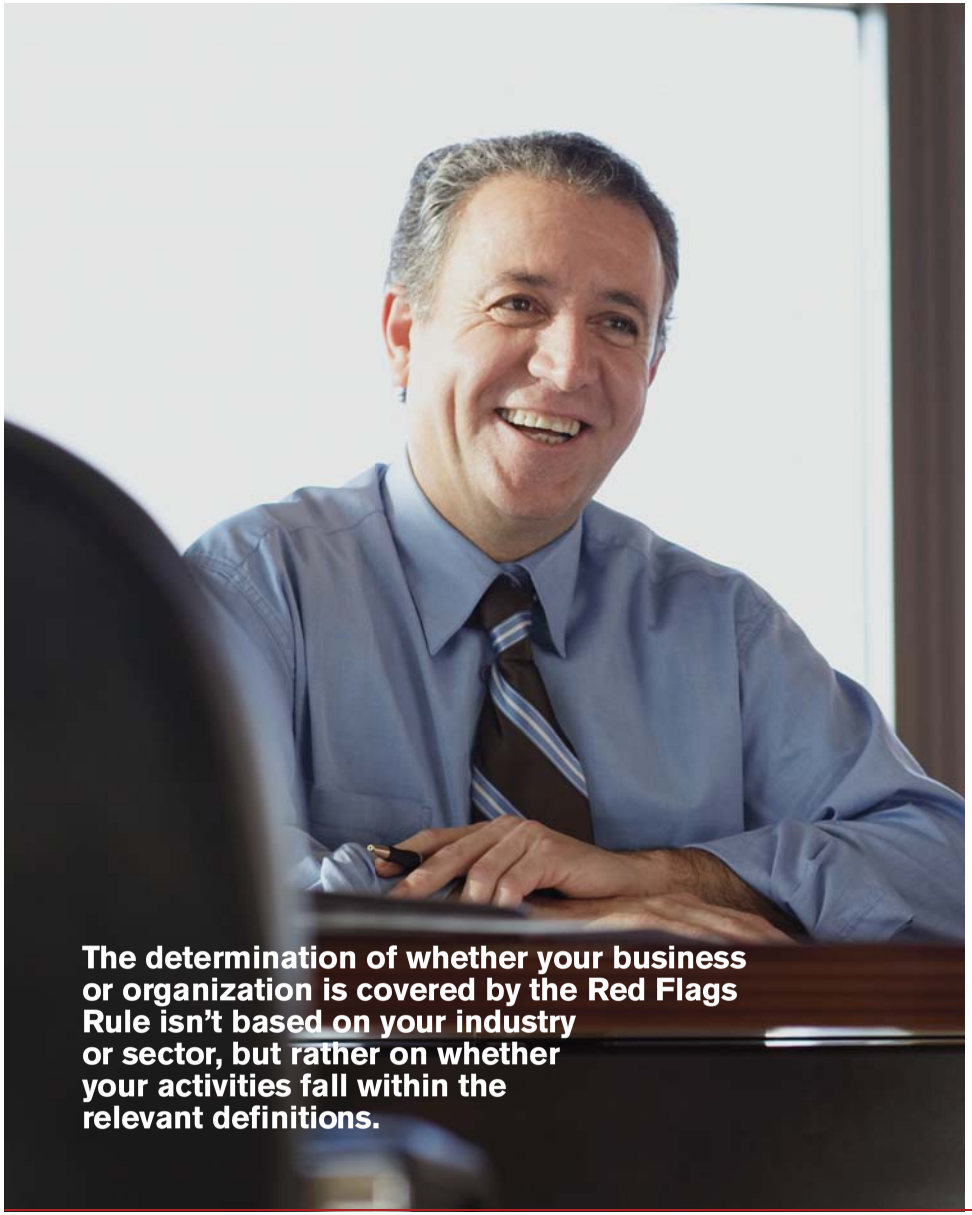
How does the Red Flags Rule fit in with the data security measures we're already taking?

ANSWER:

Preventing identity theft requires a 360° approach. Data security plays an essential role in keeping people's sensitive information from falling into the wrong hands. Protect what you have a legitimate business reason to keep and securely dispose of what you no longer need. But even with appropriate data security measures in place, thieves are resourceful and still may find ways to steal information and use it to open or access accounts. That hurts individual identity theft victims, who may have to spend hundreds of dollars and many days repairing damage to their good name and credit record. But it also hurts your bottom line. Identity thieves run up huge bills with no intention of paying – leaving you with accounts receivable you'll never be able to collect.

The Red Flag Rule picks up where data security leaves off. It seeks to prevent identity theft by ensuring that your business or organization is on the lookout for the signs that a crook is using someone else's information, typically to get products or services from you with no intention of paying. That's why it's important to fight the battle against identity theft on two fronts: First, by implementing data security practices that make it harder for crooks to get access to the personal information they use to open or access accounts, and second, by paying attention to the red flags that suggest that fraud may be afoot. For more on how to implement data security protections in your business, visit **ftc.gov/infosecurity**.





WHO MUST COMPLY WITH THE RED FLAGS RULE?

The Red Flags Rule applies to "financial institutions" and "creditors." The Rule requires you to conduct a periodic risk assessment to determine if you have "covered accounts." You need to implement a written program only if you have covered accounts.

It's important to look closely at how the Rule defines "financial institution" and "creditor" because the terms apply to groups that might not typically use those words to describe themselves. For example, many non-profit groups and government agencies are "creditors" under the Rule.[4] The determination of whether your business or organization is covered by the Red Flags Rule isn't based on your industry or sector, but rather on whether your activities fall within the relevant definitions.

Financial Institution The Red Flags Rule defines a "financial institution" as a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other person that, directly or indirectly, holds a transaction account belonging to a consumer.[5] Banks, federally chartered credit unions, and savings and loan associations come under the jurisdiction of the federal bank regulatory agencies and/or the National Credit Union Administration. Check with those agencies for guidance tailored to those businesses. The remaining financial institutions come under the jurisdiction of the FTC. Examples of financial institutions under the FTC's jurisdiction are state-chartered credit unions, mutual funds that offer accounts with check-writing privileges, or other institutions that offer accounts where the consumer can make payments or transfers to third parties.

Creditor The definition of "creditor" is broad and includes businesses or organizations that regularly defer payment for goods or services or provide goods or services and bill customers later.[6] Utility companies, health care providers, and telecommunications companies are among the entities that may fall within this

definition, depending on how and when they collect payment for their services. The Rule also defines a "creditor" as one who regularly grants loans, arranges for loans or the extension of credit, or makes credit decisions. Examples include finance companies, mortgage brokers, real estate agents, automobile dealers, and retailers that offer financing or help consumers get financing from others, say, by processing credit applications. In addition, the definition includes anyone who regularly participates in the decision to extend, renew, or continue credit, including setting the terms of credit – for example, a third-party debt collector who regularly renegotiates the terms of a debt. If you regularly extend credit to other businesses, you also are covered under this definition.

Covered Accounts Once you've concluded that your business or organization is a financial institution or creditor, you must determine if you have any "covered accounts," as the Red Flags Rule defines that term. To make that determination, you'll need to look at both existing accounts and new ones. Two categories of accounts are covered.[7] The first kind is a consumer account you offer your customers that's primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transactions.[8] Examples are credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking accounts, and savings accounts.

? **QUESTION:**
I manage a restaurant that accepts credit cards. Are we covered by the Red Flags Rule?

ANSWER:
Probably not. Simply accepting credit cards as a form of payment does not make you a "creditor" under the Red Flags Rule. But if a company offers its own credit card, arranges credit for its customers, or extends credit by selling customers goods or services now and billing them later, it is a "creditor" under the law.

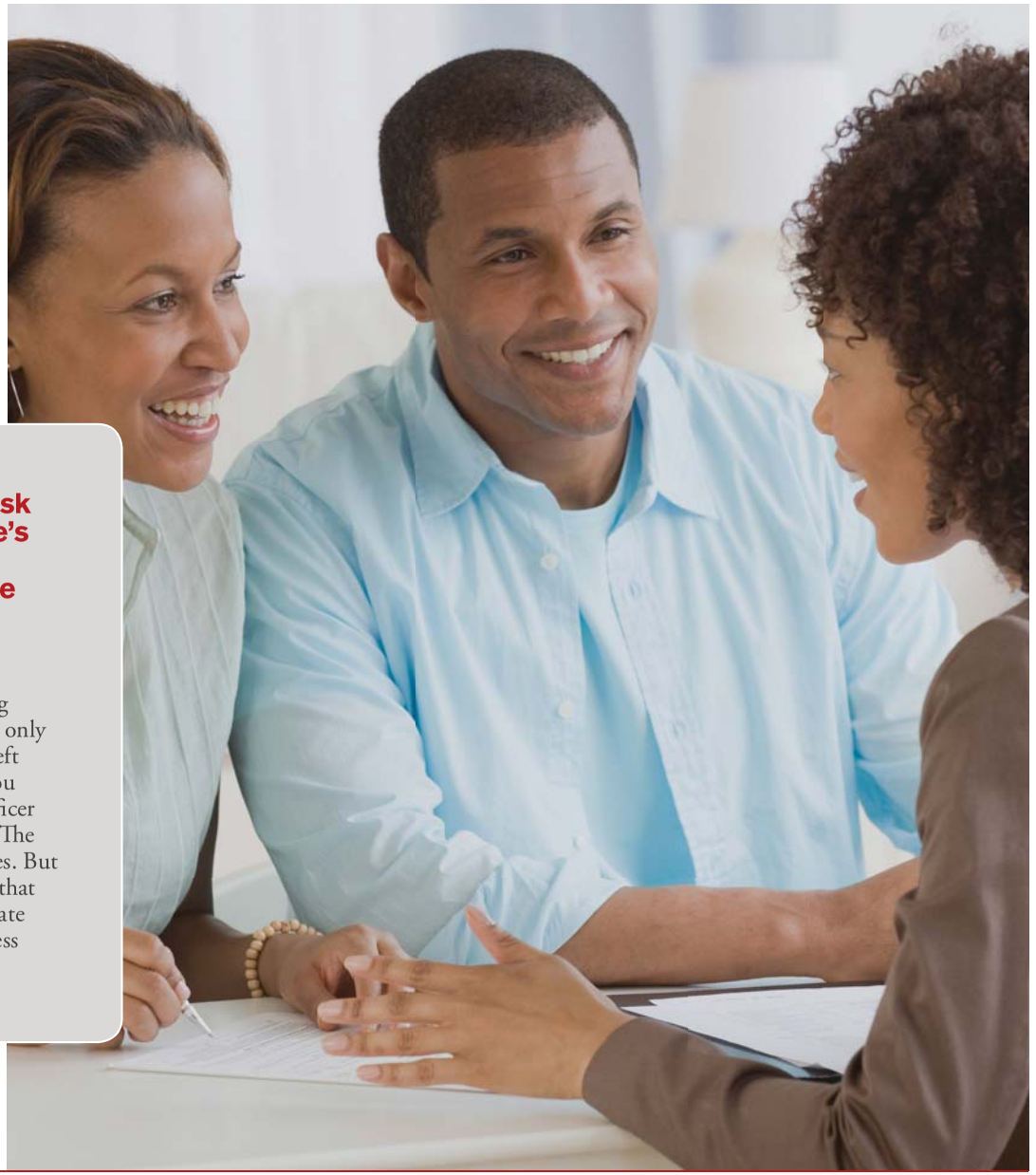
The second kind of "covered account" is "any other account that a financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks."[9] Examples include small business accounts, sole proprietorship accounts, or single transaction consumer accounts that may be vulnerable to identity theft. Unlike consumer accounts designed to permit multiple payments or transactions – they always are "covered accounts" under the Rule – other types of accounts are "covered accounts" only if the risk of identity theft is reasonably foreseeable.

In determining if accounts are covered under the second category, consider how they're opened and accessed. For example, there may be a reasonably foreseeable risk of identity theft in connection with business accounts that can be accessed remotely – such as through the Internet or by telephone. Your risk analysis must consider any actual incidents of identity theft involving accounts like these.

? **QUESTION:**
I know our company is a "creditor" under the Rule because we issue credit cards. But we also have non-credit accounts. Do we have to determine if both types of accounts are "covered accounts?"

ANSWER:
Yes, and the same goes for financial institutions with transaction and non-transaction accounts. For example, a telecommunications company that has accounts that are billed after service is rendered (credit accounts) and accounts that are prepaid or paid when service is rendered (non-credit accounts) would have to evaluate both types of accounts to determine if they're covered. Likewise, a broker-dealer that offers accounts with check-writing privileges (transaction accounts) and without those privileges (non-transaction accounts) would have to consider both kinds of accounts to determine if they're covered.

Don't have *any* covered accounts? You don't need to have a written Program. But business models and services change. That's why you must conduct a periodic risk assessment to help you determine if you've acquired any covered accounts through changes to your business structure, processes, or organization.



? **QUESTION:**

My business isn't subject to much of a risk that a crook is going to misuse someone's identity to steal from me, but I do have covered accounts. How should I structure my Program?

ANSWER:

If identity theft isn't a big risk in your business, complying with the Rule should be simple and straightforward, with only a few red flags. For example, where the risk of identity theft is low, your Program might focus on how to respond if you are notified – say, by a consumer or a law enforcement officer – that the person's identity was misused at your business. The Guidelines to the Rule have examples of possible responses. But even a low-risk business needs to have a written Program that is approved either by its board of directors or an appropriate senior employee. And because risks change, you must assess your Program periodically to keep it current.

HOW TO COMPLY: A FOUR STEP PROCESS

step 1

Identify relevant red flags.

Identify the red flags of identity theft you're likely to come across in your business.

step 2

Detect red flags.

Set up procedures to detect those red flags in your day-to-day operations.

step 3

Prevent and mitigate identity theft.

If you spot the red flags you've identified, respond appropriately to prevent and mitigate the harm done.

step 4

Update your Program.

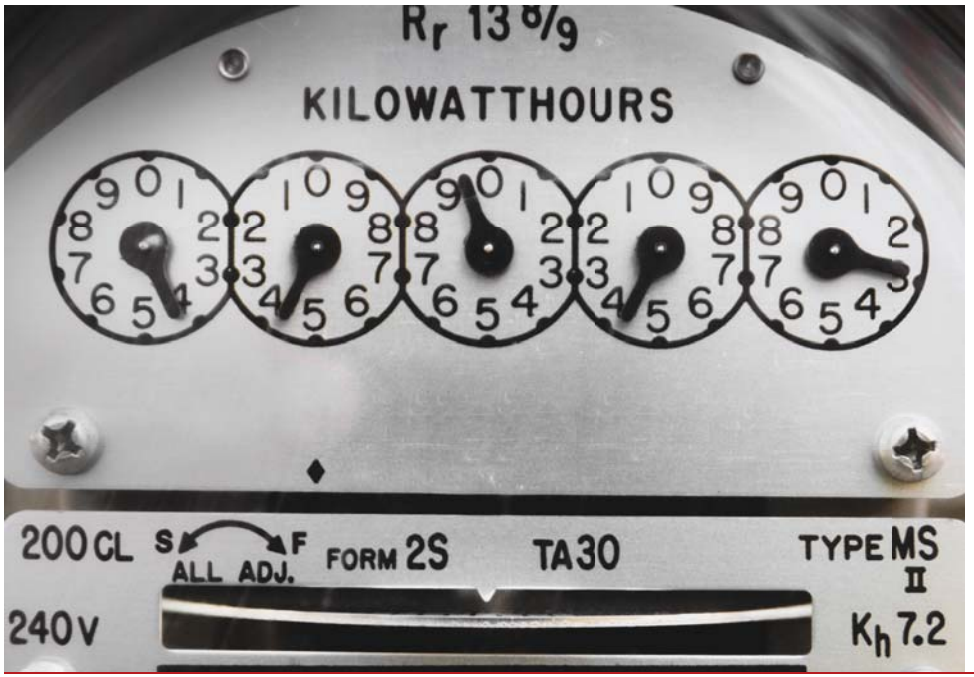
The risks of identity theft can change rapidly, so it's important to keep your Program current and educate your staff.

If you're a creditor or financial institution with covered accounts, you must develop and implement a written Identity Theft Prevention Program. The Program must be designed to prevent, detect, and mitigate identity theft in connection with the opening of new accounts and the operation of existing ones. Your Program must be appropriate to the size and complexity of your business or organization and the nature and scope of its activities. A company with a higher risk of identity theft or a variety of covered accounts may need a more comprehensive Program.

Many companies already have plans in place to combat identity theft and related fraud. If that's the case for your business, you may be able to incorporate procedures that already have proven effective.

Although there's no one-size-fits-all approach, consider:

- **Risk Factors**
- **Sources of Red Flags**
- **Categories of Common Red Flags**



1 IDENTIFY RELEVANT RED FLAGS

What are "red flags"? They're the potential patterns, practices, or specific activities indicating the possibility of identity theft.[10] Although there's no one-size-fits-all approach, consider:

Risk Factors Different types of accounts pose different kinds of risk. For example, red flags for deposit accounts may differ from red flags for credit accounts. Similarly, the red flags for consumer accounts may not be the same as those for business accounts. And red flags for accounts opened or accessed online or by phone may differ from those involving face-to-face contact. Therefore, in identifying the relevant red flags, consider the types of accounts you offer or maintain; the methods used to open covered accounts; how you provide access to those accounts; and what you have learned about identity theft in your business.

Sources of Red Flags Consider other sources of information, including how identity theft may have affected your business and the experience of other members of your industry. Because technology and criminal techniques change constantly, keep up-to-date on new threats.

Categories of Common Red Flags Supplement A to the Red Flags Rule lists five specific categories of warning signs to consider including in your Program. Some examples may be relevant to your business or organization. Some may be relevant only when combined or considered with other indicators of identity theft. The examples, listed on the following pages, aren't an exhaustive compilation or a mandatory checklist, but rather a way to help think about relevant red flags in the context of your business.

1. Alerts, Notifications, and Warnings from a Credit Reporting Company.

Here are some examples of changes in a credit report or a consumer's credit activity that may signal identity theft:

- a fraud or active duty alert on a credit report
- a notice of credit freeze in response to a request for a credit report
- a notice of address discrepancy provided by a credit reporting agency
- a credit report indicating a pattern of activity inconsistent with the person's history – for example, a big increase in the volume of inquiries or the use of credit, especially on new accounts; an unusual number of recently established credit relationships; or an account that was closed because of an abuse of account privileges

2. Suspicious Documents.

Sometimes paperwork has the telltale signs of identity theft. Here are examples of red flags involving documents:

- identification that looks altered or forged
- the person presenting the identification doesn't look like the photo or match the physical description
- information on the identification that differs from what the person presenting the identification is telling you or doesn't match with other information, like a signature card or recent check
- an application that looks like it's been altered, forged, or torn up and reassembled

3. Suspicious Personal Identifying Information.

Identity thieves may use personally identifying information that doesn't ring true. Here are some red flags involving identifying information:

- inconsistencies with what else you know – for example, an address that doesn't match the credit report, the use of a Social Security number that's listed on the Social Security Administration Death Master File,[11] or a number that hasn't been issued, according to the monthly issuance tables available from the Social Security Administration[12]
- inconsistencies in the information the customer has given you – say, a date of birth that doesn't correlate to the number range on the Social Security Administration's issuance tables
- an address, phone number, or other personal information that's been used on an account you know to be fraudulent
- a bogus address, an address for a mail drop or prison, a phone number that's invalid, or one that's associated with a pager or answering service
- a Social Security number that's been used by someone else opening an account
- an address or telephone number that's been used by many other people opening accounts
- a person who omits required information on an application and doesn't respond to notices that the application is incomplete
- a person who can't provide authenticating information beyond what's generally available from a wallet or credit report – for example, a person who can't answer a challenge question

4. Suspicious Account Activity.

Sometimes the tip-off is how the account is being used. Here are some red flags related to account activity:

- soon after you're notified of a change of address, you're asked for new or additional credit cards, cell phones, etc., or to add users to the account
- a new account that's used in ways associated with fraud – for example, the customer doesn't make the first payment, or makes only an initial payment or most of the available credit is used for cash advances or for jewelry, electronics, or other merchandise easily convertible to cash
- an account that's used in a way inconsistent with established patterns – for example, nonpayment when there's no history of missed payments, a big increase in the use of available credit, a major change in buying or spending patterns or electronic fund transfers, or a noticeable change in calling patterns for a cell phone account
- an account that's been inactive for a long time is suddenly used again
- mail sent to the customer that's returned repeatedly as undeliverable although transactions continue to be conducted on the account
- information that the customer isn't receiving their account statements in the mail
- information about unauthorized charges on the account

5. Notice from Other Sources.

Sometimes a red flag that an account has been opened or used fraudulently can come from a customer, a victim of identity theft, a law enforcement authority, or someone else.

2 DETECT RED FLAGS

Once you've identified the red flags of identity theft for your business, it's time to lay out procedures for detecting them in your day-to-day operations. Sometimes using identity verification and authentication methods can help you turn up red flags. Consider how your procedures may differ depending on whether an identity verification or authentication is taking place in person or at a distance – say, by telephone, mail, Internet, or wireless system.

New accounts When verifying the identity of the person who is opening a new account, reasonable procedures may include getting a name, address, and identification number and, for in-person verification, checking a current government-issued identification card, like a driver's license or passport. Depending on the circumstances, you may want to compare that information with the information you can find out from other sources, like a credit reporting company or data broker, the Social Security Number Death Master File, or publicly available information.[13] Asking challenge questions based on information from other sources can be another way of verifying someone's identity.

Existing accounts To detect red flags for existing accounts, your Program may include reasonable procedures to authenticate customers (confirming that the person you're dealing with really is your customer), monitor transactions, and verify the validity of change-of-address requests. For online authentication, consider the Federal Financial Institutions Examination Council's guidance on authentication as a starting point.[14] It explores the application of multi-factor authentication techniques in high-risk environments, including using passwords, PIN numbers, smart cards, tokens, and biometric identification. Certain types of personal information – like a Social Security number, date of birth, mother's maiden name, or mailing address – are not good authenticators because they're so easily accessible.

You may already be using programs to monitor transactions, identify behavior that indicates the possibility of fraud and identity theft, or validate changes of address. If that's the case, incorporate these tools into your Program.

3 PREVENT AND MITIGATE IDENTITY THEFT

When you spot a red flag, be prepared to respond appropriately. Your response will depend upon the degree of risk posed. It may need to accommodate other legal obligations – for example, laws for medical providers or utility companies regarding the provision and termination of service.

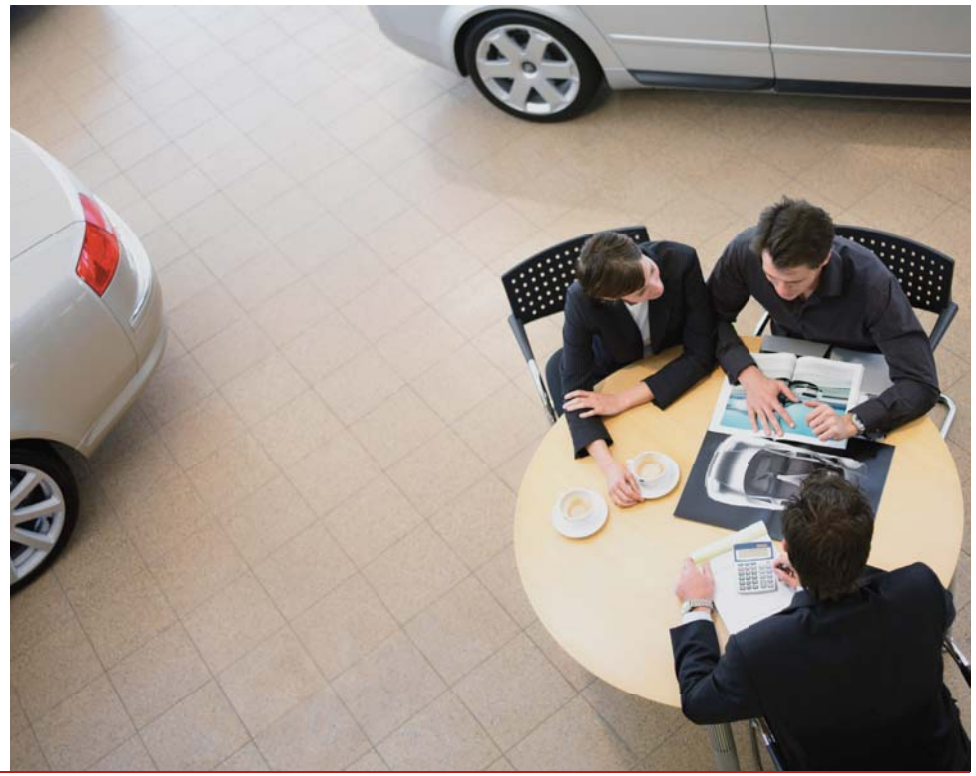
The Guidelines in the Red Flags Rule offer examples of some appropriate responses, including:

- monitoring a covered account for evidence of identity theft
- contacting the customer
- changing passwords, security codes, or other ways to access a covered account
- closing an existing account
- reopening an account with a new account number
- not opening a new account
- not trying to collect on an account or not selling an account to a debt collector
- notifying law enforcement
- determining that no response is warranted under the particular circumstances

The facts of a particular case may warrant using one or several of these options, or another response altogether. In determining your response, consider whether any aggravating factors heighten the risk of identity theft. For example, a recent breach that resulted in unauthorized access to a customer's account records or a customer who gave personal information to an imposter would certainly call for a stepped-up response because the risk of identity theft would go up.

4 UPDATE THE PROGRAM

The Rule recognizes that new red flags emerge as technology changes or identity thieves change their tactics. Therefore, it requires periodic updates to your Program to ensure that it keeps current with identity theft risks. Factor in your own experience with identity theft; changes in how identity thieves operate; new methods to detect, prevent, and mitigate identity theft; changes in the accounts you offer; and changes in your business, such as mergers, acquisitions, alliances, joint ventures, and arrangements with service providers.



ADMINISTERING YOUR PROGRAM

Your initial written Program must get the approval of your board of directors or an appropriate committee of the board; if you don't have a board, someone in senior management must approve it.

Your board may oversee, develop, implement, and administer the Program or it may designate a senior employee to do the job. Responsibilities include assigning specific responsibility for the Program's implementation, reviewing staff reports about how your organization is complying with the Rule, and approving important changes to your Program.

The Rule requires that you train relevant staff only as "necessary" – for example, staff that has received anti-fraud prevention training may not need to be re-trained. Remember though, that employees at many levels of your organization can play a key role in identity theft deterrence and detection.

In administering your Program, monitor the activities of your service providers. If they're conducting activities covered by the Rule – for example, opening or managing accounts, billing customers, providing customer service, or collecting debts – they must apply the same standards you would if you were performing the tasks yourself. One way to make sure your service providers are taking reasonable steps is to add a provision to your contracts that they have procedures in place to detect red flags and either report them to you or respond appropriately to prevent or mitigate the crime themselves. Other ways to monitor them include giving them a copy of your Program, reviewing their red flags policies, or requiring periodic reports about red flags they have detected and their response.

It's likely that service providers offer the same services to a number of client companies. As a result, the Guidelines are flexible about using service providers that have their own Programs as long as they meet the requirements of the Rule.

The person responsible for your Program should report at least annually to the board of directors or a designated senior manager. The report should evaluate how effective your Program has been in addressing the risk of identity theft; how you're monitoring the practices of your service providers; significant incidents of identity theft and your response; and recommendations for major changes to the Program.[15]

RESOURCES

For more information on developing your Identity Theft Prevention Program:

New "Red Flag" Requirements for Financial Institutions and Creditors Will Help Fight Identity Theft
ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm

The "Red Flags" Rule: Are You Complying with New Requirements for Fighting Identity Theft?
ftc.gov/bcp/edu/pubs/articles/art10.shtm

The Red Flags Rule
ftc.gov/os/fedreg/2007/november/071109redflags.pdf

Find out about identity theft and data security:

The FTC's Identity Theft Site
ftc.gov/idtheft

OnGuard Online Identity Theft Site
onguardonline.gov/topics/identity-theft.aspx

The FTC's Information Security Site
ftc.gov/infosecurity

Protecting Personal Information: A Guide for Business
ftc.gov/bcp/edu/pubs/business/idtheft/bus69.pdf

Information Security Interactive Video Tutorial
ftc.gov/bcp/edu/multimedia/interactive/infosecurity/index.html

ENDNOTES

1. The Red Flags Rule was promulgated in 2007 pursuant to Section 114 of the Fair and Accurate Credit Transaction Act of 2003 (FACT Act), Pub. L. 108-159, amending the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681m(e). The Red Flags Rule is published at 16 C.F.R. § 681.2. See also 72 Fed. Reg. at 63,772 (Nov. 9, 2007). You can find the full text at www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf. The preamble – pages 63718-63733 – discusses the purpose, intent, and scope of coverage of the Rule. The text of the FTC Rule is at pages 63772-63774. The Rule includes Guidelines – Appendix A, pages 63773-63774– that are intended to help businesses develop and maintain a compliant Program. The Supplement to the Guidelines – page 63774 – provides a list of 26 examples of red flags for businesses and organizations to consider incorporating into their Programs. This guide does not address companies' obligations under the Address Discrepancy Rule or the Card Issuer Rule, also contained in the Federal Register with the Red Flags Rule.
2. "Identity theft" means a fraud committed or attempted using the identifying information of another person without authority. See 16 C.F.R. § 603.2(a). "Identifying information" means "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any –

   (1) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

   (2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

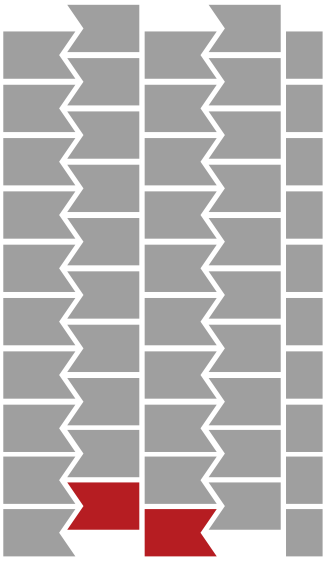
   (3) Unique electronic identification number, address, or routing code; or

   (4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e))."

   See 16 C.F.R. § 603.2(b).
3. See 16 C.F.R. § 681.2(b)(9).
4. See 15 U.S.C. § 1691a(f). See also15 U.S.C. § 1681a(b).
5. The Rule's definition of "financial institution" is found in the FCRA. See 15 U.S.C. § 1681a(t). The term "transaction account" is defined in section 19(b) of the Federal Reserve Act. See 12 U.S.C. § 461(b)(1)(C). A "transaction account" is a deposit or account from which the owner may make payments or transfers to third parties or others. Transaction accounts include checking accounts, negotiable orders of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.
6. "Creditor" and "credit" are defined in the FCRA, see 15 U.S.C. § 1681a(r)(5), by reference to section 702 of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691a. The ECOA defines "credit" as "the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. § 1691a(d). The ECOA defines "creditor" as "any person who regularly extends, renews or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of any original creditor who participates in the decision to extend, renew, or continue credit." 15 U.S.C. § 1691a(e). The term "person" means "a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association." 15 U.S.C. § 1691a(f). See also Regulation B, 68 Fed. Reg. 13161 (Mar. 18, 2003).
7. An "account" is a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household, or business purposes. 16 C.F.R. § 681.2(b)(1). An account does not include a one-time transaction involving someone who isn't your customer, such as a withdrawal from an ATM machine.
8. See 16 C.F.R. § 681.2(b)(3)(i).
9. 16 C.F.R. § 681.2(b)(3)(ii).
10. See 16 C.F.R. § 681.2(b)(9).
11. The Social Security Administration Death Master File is a service companies can buy that contains records of deaths that have been reported to the Social Security Administration. See www.ntis.gov/products/ssa-dmf.aspx.
12. See www.ssa.gov/employer/ssnvhighgroup.htm.
13. These verification procedures are set forth in the Customer Identification Program Rule applicable to banking institutions, 31 C.F.R. § 103.121. This Rule may be a helpful starting point in developing your Program.
14. "Authentication in an Internet Banking Environment" (Oct. 12, 2005), available at www.ffiec.gov/press/pr101205.htm.
15. See 72 Fed. Reg. at 63,773.

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580
1–877–FTC–HELP (1–877–382–4357)
ftc.gov/redflagsrule

March 2009



CMIS NEWS UPDATE WITH OBSERVATION NOTES
September 30 2009

New REED Bill re No-Fault-No-Income Assistance; Court Mediation; Mandatory Modification Evaluations; Face-to-Face Alternatives to Foreclosures; Foreclosure Process Regulation; Part 1 New Bill Introduction

United States Senator Jack Reed of Rhode Island introduced the Preserving Homes and Communities Act of 2009, cosponsored by Senators Dick Durbin (D-IL), Sheldon Whitehouse (D-RI), and Jeff Merkley (D-OR). The bill is intended to help address the housing crisis by requiring ***loan modification evaluations*** and loan modification offers to qualified homeowners; establishing a new mortgage ***payment assistance program***; and incentivizing states and local governments to ***create strong mediation programs***, which allow homeowners and servicers to meet face to face to try to find an alternative to foreclosure.

> The press release indicates that the Preserving Homes and Communities Act of 2009 will:
>
> **Expand and Improve Loan Modification Programs and Rein in Costly Fees**
>
> Requires lenders and servicers to evaluate homeowners for affordable modifications prior to initiating foreclosure, and offering approved modifications to homeowners if the net present value of modification is greater than that of foreclosure.
> 2. Establishes meaningful penalties by making noncompliance a defense to foreclosure.
> 3. Places limits on when foreclosure fees can be charged and prohibits costly mark-ups.

Observation: This is of particular import as foreclosure initiation would be delayed precluding parallel evaluation/foreclosure processing channels, causing great delays in the processing of foreclosures including foreclosure attorney and related vendor staffing, and compliance with the Act (modification evaluation and offer) would effectively become a procedural and or substantive jurisdictional pre-requisite to foreclosure, or at least a complete defense to foreclosure. The evaluation process however could become exponentially costly if face-to-face meetings become the norm, unless a new automated

system of loss mitigation resolution is infused into the process. The Bill assumes all mediations require face-to-face meetings, which most mandatory mediations would, unless the process affords fast track resolution prior to in-person face-to-face meetings through preparatory meetings (i.e.: on the phone) or outcome determinative centralized pre-processing. However, the Bill requires net present value calculations (NPV) be done to arrive at potential eligibility for a modification and the supervision of the mediation by the state court, and selection and training of a neutral by the State or local authorities. Moreover, the Act would define limitations for charging foreclosure fees and costs.

Provide Targeted Mortgage Payment Assistance

1. Assists homeowners experiencing a sharp reduction in income through no fault of their own.
2. Authorizes $6.375 billion in formula funding to states to create revolving loan funds to offer homeowners grants or subsidized loans.
3. Requires states to carefully steward federal dollars by requiring programs to abide by commonsense guidelines such as **evaluating applicants' employment prospects and capping maximum loan amounts**.

Observation: This is of particular import as the Waters bill concepts of assisting homeowners without income (due to under or unemployment) is taking hold in this bill as a ***no-fault no-income assistance package***. The bill would place guideline standards upon the lender/servicer which may not be **subjectively unobtainable** unless objectively designed especially when evaluating employment prospects.

Encourage Strong Mediation Programs

1. Authorizes $80 million in competitive federal matching funds for states and localities to establish mandatory mediation programs.

Observation: This is of particular import as state court mediation programs from states and judicial orders are rushing to the printers, this federal law would incentivize the states with much needed funding to establish **mandatory mediation programs**. Mandatory mediation is at the industry's doorstep.

Establish a National Database on Foreclosures

1. Authorizes $5 million for the Department of Housing and Urban Development, in conjunction with other agencies, to develop a single database that will enable better monitoring of mortgage markets.

Observation: This is of particular import, as state court mediation programs do not currently provide a meaningful database of the programs, but as the programs are integrated, the data reporting will become required and centralized. This is step one.

Capitalize the National Housing Trust Fund

1. Provides $1 billion for the building, preservation, and rehabilitation of affordable housing from the proceeds of the warrants provisions in the Emergency Economic Stabilization Act.

Observation: This is of particular import, as property preservation and related building and rehab efforts need sufficient funding to avoid unnecessary blight, and this may defray costs or advances burdening lender/servicers.

LINKS:

The Press Release entitled: **"**Reed Introduces Bill to Keep Families in Their Homes and Stabilize the Housing Market" is found at: http://reed.senate.gov/newsroom/details.cfm?id=318453

Text of the Bill: **S.1731 Preserving Homes and Communities Act of 2009**; and STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS -- (Senate - September 30, 2009) are found at:

http://www.safeguardproperties.com/pub/PreservingHomesandCommunitiesAct.doc
or at www.CMISMortgageCoalition.org

Richard Ivar Rydstrom, Esq., Chairman CMIS
www.CMISMortgageCoalition.org
rrydstrom@gmail.com

September 30, 2009
Press Release

Reed Introduces Bill to Keep Families in Their Homes and Stabilize the Housing Market

WASHINGTON, DC – In an effort to curb record-high foreclosure rates across the country and stabilize the housing market, U.S. Senator Jack Reed today introduced legislation that will help keep families in their homes and prevent communities from deteriorating as a result of skyrocketing mortgage defaults. Reed's Preserving Homes and Communities Act of 2009, cosponsored by Senators Dick Durbin (D-IL), Sheldon Whitehouse (D-RI), and Jeff Merkley (D-OR), will help address the housing crisis by requiring that qualified homeowners are evaluated for and offered loan modifications; establishing a new mortgage payment assistance program; and incentivizing states and local governments to create strong mediation programs, which allow homeowners and servicers to meet face to face to try to find an alternative to foreclosure.

"In the last year, the federal government has taken decisive action and devoted substantial financial resources to shoring up financial markets, averting a potential national and global financial meltdown. Despite federal efforts, the number of foreclosures continues to rise at an alarming rate on pace to surpass last year's foreclosures by a third. The Preserving Homes and Communities Act will ensure that we are taking similarly aggressive actions to address the housing crisis, which has devastated families, crippled local communities, and dragged down the broader economy," said Reed. "More and more households are finding that even with a fixed-rate mortgage that they could afford before the recession, they are just one pink slip away from losing their biggest investment. My bill provides targeted relief to qualified homeowners so that more families can keep their homes, protects communities from suffering even greater financial losses, and sets us on the path to stabilizing the housing sector as a foundation for lasting economic recovery."

Moodys.com suggests that the number of mortgages in default could rise to four million this year alone. According to the Mortgage Bankers Association (MBA), more than a third of the overall increase in the start of foreclosures in the second quarter was attributable to prime, fixed rate loans. And the number of homeowners at least one payment past due is more than one in eight—the highest level since the MBA began keeping track.

"As foreclosure rates continue to climb, a lasting economic recovery becomes harder to reach," said Durbin. "Until we stabilize the housing market, we simply won't get a handle on the broader economic crisis. Voluntary efforts to keep families in their homes have failed. This bill will force lenders to modify qualified mortgages, create a homeowners assistance program and give states a bigger role in mediation efforts. It's long past time for the Senate to step up to keep families in their homes and to help lead the way toward economic recovery. This bill will help achieve those goals."

"As I travel around our state, I often hear concerns from Rhode Islanders affected by our

nation's housing crisis," said Whitehouse. "It is clear to me that Congress must do more to level the field for struggling American homeowners. Jack Reed has been a leader on this issue, and I'm proud to support this new legislation to help families in Rhode Island and across the nation to keep their homes."

"Millions of American families continue to be at-risk of losing their homes due to the current economic crisis," said Merkley. "The Preserving Homes and Communities Act of 2009 will encourage lenders to do right by homeowners in need and give states assistance to prevent further foreclosures. We must stem the tide of foreclosures that continue to wreak havoc on American families and local communities."

The Preserving Homes and Communities Act of 2009 builds on Senator Reed's requests to the Secretaries of Treasury and Housing and Urban Development urging the agencies to hold banks and lenders accountable for providing relief to qualified homeowners, by requiring lenders to make good on their promises to evaluate eligible homeowners and offer loan modifications to those who qualify.

The bill would improve the current loan modification program by expanding it to more qualified homeowners; giving these homeowners protection against all foreclosure proceedings while waiting for a loan modification analysis, not just against a foreclosure sale; and providing these homeowners with the legal tools to help save their homes when lenders fail to follow the program's rules. It would also help establish state mortgage assistance programs nationally and encourage mandatory mediation programs.

The Preserving Homes and Communities Act of 2009 will:

Expand and Improve Loan Modification Programs and Rein in Costly Fees

• Requires lenders and servicers to evaluate homeowners for affordable modifications prior to initiating foreclosure, and offering approved modifications to homeowners if the net present value of modification is greater than that of foreclosure.
• Establishes meaningful penalties by making noncompliance a defense to foreclosure.
• Places limits on when foreclosure fees can be charged and prohibits costly mark-ups.

Provide Targeted Mortgage Payment Assistance

• Assists homeowners experiencing a sharp reduction in income through no fault of their own.
• Authorizes $6.375 billion in formula funding to states to create revolving loan funds to offer homeowners grants or subsidized loans.
• Requires states to carefully steward federal dollars by requiring programs to abide by commonsense guidelines such as evaluating applicants' employment prospects and capping maximum loan amounts.

Encourage Strong Mediation Programs

• Authorizes $80 million in competitive federal matching funds for states and localities to establish mandatory mediation programs.

Establish a National Database on Foreclosures

• Authorizes $5 million for the Department of Housing and Urban Development, in conjunction with other agencies, to develop a single database that will enable better monitoring of mortgage markets.

Capitalize the National Housing Trust Fund

• Provides $1 billion for the building, preservation, and rehabilitation of affordable housing from the proceeds of the warrants provisions in the Emergency Economic Stabilization Act.

http://reed.senate.gov/newsroom/details.cfm?id=318453

Preserving Homes and Communities Act
REED Bill S 1731 Mediation, Modification, etc.
STATEMENTS & TEXT OF BILL:

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS -- (Senate - September 30, 2009)

The Preserving Homes and Communities Act creates an incentive for lenders to more quickly evaluate whether homeowners qualify for modifications by requiring that homeowners be evaluated for a loan modification that conforms with the Administration's programs before a bank can initiate foreclosure. It also states that homeowners who qualify must be offered a modification. My bill prevents costly fees from piling up while qualified homeowners wait to be granted more affordable mortgages, and no longer will homeowners be left out in the cold if their particular loan servicer chooses not to participate in the government program. And if lenders fail to follow the rules, this bill will allow homeowners to use servicers' noncompliance as a defense to foreclosure. The bill also places prudent limits on the fees that homeowners can be charged--particularly foreclosure-related fees.

My legislation provides $80 million as an incentive for more States and local governments to create strong mediation programs, an additional tool to help homeowners facing foreclosure. Mediation programs allow homeowners and servicers to meet, face to face, to try to find an alternative to foreclosure. These programs have shown promise in several state and local settings for helping homeowners avoid foreclosure, and this legislation will provide matching funds to help establish new mediation initiatives. This bill also sets aside $5 million for the creation of a Federal database on defaults and foreclosures to improve oversight of public and private efforts to sustain homeownership.

Finally, we know that these tough economic times are impacting renters as well. Competition for already-scarce affordable housing has increased. With the poverty rate at its highest level in 11 years, more individuals and families with limited incomes are at risk of homelessness. For this reason, the Preserving Homes and Communities Act uses proceeds from the warrant provisions I crafted for the financial rescue package to capitalize the National Housing Trust Fund. These warrant provisions are allowing taxpayers to benefit from the upside of our investments in faltering financial institutions. My view is that some of these returns from providing a firmer foundation for our financial institutions would be put to good use by providing a firmer foundation for affordable housing in our country. The National Housing Trust Fund, which I worked to establish in the Housing and Economic Recovery Act, will enable the building, preservation, and rehabilitation of affordable housing.

I am introducing the Preserving Homes and Communities Act because when homes get foreclosed on, it does not just affect individual borrowers and lenders. Whole neighborhoods pay the price. Housing industry experts estimate that for every foreclosure within an eighth of a mile of a house, two

and a half city blocks in every direction, the property value of surrounding homes drops by about 1 percent.

I believe that the Federal Government has a role to play in ensuring that millions of Americans, including neighbors who avoided risky loans and have sacrificed and saved to pay their bills on time, are protected from further declines in property values and the blight of abandoned homes.

This legislation is targeted relief that will help more families keep their homes and protect communities from even greater losses. The Preserving Homes and Communities Act will set us on the path to stabilizing the housing sector as a foundation of lasting economic recovery. I hope my colleagues will join me and Senators DURBIN, WHITEHOUSE, and MERKLEY in supporting this bill and other foreclosure prevention efforts.

Mr. President, I ask unanimous consent that the text of the bill be printed in the *Record*.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S . 1731

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Preserving Homes and Communities Act of 2009''.

SEC. 2. LOAN MODIFICATION REQUIREMENTS.

(a) *Definitions*.--In ths section--

(1) the term ``covered mortgagee'' means--

(A) a mortgagee under a federally related mortgage loan; and

(B) the agent of a mortgagee under a federally related mortgage loan;

(2) the term ``covered mortgagor'' means an individual who is a mortgagor under a federally related mortgage loan--

(A) made by a covered mortgagee;

(B) secured by the principal residence of the mortgagor; and

(C) on which the mortgagor cannot make payments due to financial hardship, as determined by the Secretary;

(3) the term ``federally related mortgage loan'' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602);

(4) the term ``home loan modification protocol'' means a home loan modification protocol that is developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary;

(5) the term ``qualified loan modification'' means a modification to the terms of a mortgage agreement between a covered mortgagee and a covered mortgagor that is made pursuant to a determination by the covered mortgagee using a home loan modification protocol that a modification would produce a greater net present value than foreclosure to--

(A) the covered mortgagee; or

(B) in the aggregate, all persons that hold an interest in the mortgage agreement; and

(6) the term ``Secretary'' means the Secretary of Housing and Urban Development.

(b) *Loan Modification Required*.--

(1) IN GENERAL.--A covered mortgagee may not initiate or continue a foreclosure proceeding against a covered mortgagor that is otherwise authorized under State law unless--

(A) the covered mortgagee has determined whether the covered mortgagor is eligible for a qualified loan modification;

(B) in the case of a covered mortgagor who the covered mortgagee determines is eligible for a qualified loan modification, the covered mortgagee has offered a qualified loan modification to the covered mortgagor; and

(C) in the case of a covered mortgagor who the covered mortgagee determines is not eligible for a qualified loan modification, the covered mortgagee has made available to the covered mortgagor the note, deed of trust, or any other document necessary to establish the right of the mortgagee to foreclose on the mortgage.

(2) NO WAIVER OF RIGHTS.--A covered mortgagee may not require a covered mortgagor to waive any right of the covered mortgagor as a condition of making a qualified loan modification.

(3) SALE OF REAL PROPERTY SECURING MORTGAGE.--

(A) SALE.--A covered mortgagee may not sell the real property securing the mortgage of a covered mortgagor unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(B) ACTION BY PURCHASER.--A person that purchases from a covered mortgagee the real property securing the mortgage of a covered mortgagor may not recover possession of the real property unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(C) CERTIFICATION STANDARDS.--The Secretary shall establish minimum standards for the certification required under this paragraph.

(4) DEFENSE TO FORECLOSURE.--Failure to comply with this subsection shall be a defense to foreclosure.

(5) RULE OF CONSTRUCTION.--Nothing in this subsection may be construed to prevent a covered mortgagee from offering or making a loan modification with a lower payment, lower interest rate, or principal reduction beyond that required by a modification made using a home loan modification protocol with respect to a covered mortgagor.

(c) *Fees Prohibited*.--

(1) LOAN MODIFICATION FEES PROHIBITED.--A covered mortgagee may not charge a fee to a covered mortgagor for carrying out the requirements under subsection (b).

(2) FORECLOSURE-RELATED FEES.--

(A) IN GENERAL.--Except as provided in subparagraph (B), a mortgagee may not charge a foreclosure-related fee to a mortgagor before--

(i) the mortgagee has made a determination under subsection (b)(1); and

(ii) the mortgage has entered the foreclosure process.

(B) DELINQUENCY FEES.--A mortgagee may charge a delinquency fee for late payment by the mortgagor.

(3) FEES NOT IN CONTRACT.--A mortgagee may charge to a mortgagor only such fees as have been specified in advance by the mortgage agreement.

(4) FEES FOR EXPENSES INCURRED.--A mortgagee may charge a fee to a mortgagor only for services actually performed by the mortgagee or a third party in relation to the mortgage agreement. For purposes of this paragraph, the term ``third party'' does not include an affiliate or subsidiary of the mortgagee.

(5) PENALTY.--The Secretary shall collect from any mortgagee that charges a fee in violation of this subsection an amount equal to $6,000 for each such fee.

(d) *Regulations*.--Not later than 3 months after the date of enactment of this Act, the Secretary shall issue by notice any requirements to carry out this section. The Secretary shall subsequently issue, after notice and comment, final regulations to carry out this section.

SEC. 3. GRANTS TO STATES TO ASSIST HOMEOWNERS IN DEFAULT.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following:

``(g) *Grants to States to Assist Homeowners in Default*.--

``(1) DEFINITIONS.--In this subsection--

``(A) the term `eligible agency' means a State housing finance agency or an agency designated by the State as an eligible agency;

``(B) the term `eligible homeowner' means a mortgagor who--

``(i) is a permanent resident of the State in which the principal residence of the mortgagor is located;

``(ii) agrees to seek counseling from a counseling agency approved by the Secretary if the eligible homeowner receives a loan or grant made using funds under this subsection;

``(iii) is suffering from financial hardship which is unexpected or due to circumstances beyond the control of the mortgagor;

``(iv) is unable to correct any delinquency on any amounts past due on the home loan of such mortgagor within a reasonable time without financial assistance;

``(v) has requested a loan modification from the mortgagee;

``(vi) is unable to make full payment on any home loan payment due for all liens within the 30-day period following the date of the application by the mortgagor for a loan or grant using funds under this subsection;

``(vii) the eligible agency determines has a reasonable probability of resuming full payments due for all liens on the mortgage of such mortgagor not later than 15 months after the date on which the mortgagor receives a loan or grant using funds under this subsection; and

``(viii) has not previously received a loan or grant using funds under this subsection; and

``(C) the term `mortgagor' means a mortgagor under a mortgage--

``(i) secured by a 1- to 4-family owner-occupied residence (including a 1-family unit in a condominium project and a membership interest and occupancy agreement in a cooperative housing project) that is used as the principal residence of the mortgagor;

``(ii) with an interest rate that does not exceed the prime rate of interest at the time of loan origination, as such prime rate is determined by not less than 75 percent of the 30 largest depository institutions in the United States; and

``(iii) for an amount that does not exceed the conforming loan limit for conventional mortgages, as determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)).

``(2) GRANT PROGRAM ESTABLISHED.--The Secretary shall award grants to eligible agencies, to enable eligible agencies to provide--

``(A) 1-time emergency grants or subsidized loans to eligible homeowners to assist such eligible homeowners in satisfying any amounts past due on their home loans;

``(B) grants or subsidized loans to eligible homeowners for a specified number of future mortgage payments by the eligible homeowners; and

``(C) stipends of not more than $1,500 to assist with relocation expenses for homeowners not eligible for the program.

``(3) ADDITIONAL SERVICES PROVIDED BY ELIGIBLE AGENCY.--An eligible agency that receives a grant under this subsection shall provide--

``(A) a readily accessible source for information on, and referral to, public services available to assist a homeowner who is in default on their home loan;

``(B) a homeowner with referrals to counseling agencies approved by the Department of Housing and Urban Development that may be able to assist that homeowner, if that homeowner is in default on their home loan;

``(C) information to homeowners on available community resources relating to homeownership, including--

``(i) public assistance or benefits programs;

``(ii) mortgage assistance programs, including programs that help homeowners prepare documents for loan modification applications;

``(iii) home repair assistance programs;

``(iv) legal assistance programs;

``(v) utility assistance programs;

``(vi) food assistance programs; and

``(vii) other Federal, State, or local government funded social services; and

``(D) staff who--

``(i) are able to conduct a brief assessment of the situation of a homeowner; and

``(ii) based on such assessment, make appropriate referrals to, and provide application information regarding, programs that can provide assistance to such homeowner.

``(4) FORMULA.--Not later than 3 months after the date of enactment of the Preserving Homes and Communities Act of 2009, the Secretary shall

develop a formula for the award of funds under this subsection that includes the following factors:

``(A) The population of the State, as determined by the Bureau of the Census in most recent estimate of the resident population of the State.

``(B) The rate of mortgages in the State that are delinquent more than 90 days.

``(C) The ratio of foreclosures to owner-occupied households in the State.

``(D) The change, if any, in the rate of unemployment in the State between 2007 and 2008.

``(5) PROGRAM REQUIREMENTS.--

``(A) SELECTION CRITERIA.--

``(i) IN GENERAL.--Each eligible entity that receives a grant under this subsection shall develop selection criteria for eligible homeowners seeking a grant or subsidized loan under this subsection.

``(ii) INCOME REPORTING.--A mortgagor that receives a grant or subsidized loan under this subsection shall be required, in accordance with criteria prescribed by the eligible agency, to report any increase in income.

``(B) LOAN REQUIREMENTS.--

``(i) INTEREST RATE.--Any loan made using a grant under this subsection shall carry a simple annual percentage rate of interest which shall not exceed the prime rate of interest, as such prime rate is determined from time to time by not less than 75 percent of the 30 largest depository institutions in the United States.

``(ii) COMPOUND INTEREST PROHIBITED.--Interest on the outstanding principal balance of any loan under this subsection shall not compound.

``(iii) BALANCE DUE.--

``(I) IN GENERAL.--The principal of any loan made under this paragraph, including any interest accrued on such principal, shall not be due and payable unless the real property securing such loan is sold or transferred.

``(II) DEPOSIT OF BALANCE DUE.--If an event described in subclause (I) occurs, the principal of any loan made under this subsection, including any interest accrued on such principal, shall immediately become due and payable to the eligible agency from which the loan originated.

``(iv) PREPAYMENT.--Any eligible homeowner who receives a loan using a grant made under this subsection may repay the loan in full, without penalty, by lump sum or by installment payments, at any time prior to the loan becoming due and payable.

``(v) MAXIMUM AMOUNT.--The amount of any loan to any 1 eligible homeowner under this subsection may not exceed 20 percent of the original mortgage amount borrowed by the eligible homeowner.

``(vi) SUBORDINATION.--Any loan made using a grant under this subsection will be subordinated to any refinancing of the first mortgage, any preexisting subordinate financing, any purchase money mortgage, or subordinated for any other reason, as determined by the eligible agency.

``(6) SEPARATE ACCOUNT.--

``(A) SEPARATE ACCOUNT.--An eligible agency that receives a grant under this subsection shall establish a separate account in which to hold amounts received under this subsection.

``(B) REPAYMENT OF LOANS.--Any amounts repaid on a subsidized loan made under this subsection shall be deposited in the account established under subparagraph (A).

``(C) OTHER FUNDING.--Amounts donated or otherwise directed to be used for purposes of this subsection may be deposited in the account established under subparagraph (A) to help capitalize such account.

``(7) USE OF GRANT FUNDS.--

``(A) IN GENERAL.--Subject to subparagraph (B), any amounts made available for purposes of this subsection may be used only for the purposes described in paragraph (2).

``(B) EXCEPTION FOR ADMINISTRATIVE COSTS.--An eligible agency may use not more than 5 percent of any funds received under this subsection for administrative costs relating to activities carried out under paragraph (2).

``(8) EXISTING LOAN FUNDS.--Any eligible agency with a previously existing fund established to make loans to assist homeowners in satisfying any amounts past due on their home loan or for future payments may use funds appropriated for purposes of this subsection for that existing loan fund, even if the eligibility, application, program, or use requirements for that loan program differ from the eligibility, application, program, and use requirements of this subsection, unless such use is expressly determined by the Secretary to be inappropriate.

``(9) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to carry out this section--

``(A) $6,375,000,000 for fiscal year 2010; and

``(B) such sums as may be necessary for each of fiscal years 2011 through 2013.''.

SEC. 4. MEDIATION INITIATIVES.

(a) *Definitions*.--In this section--

(1) the term ``mortgagee'' includes the agent of a mortgagee; and

(2) the term ``Secretary'' means the Secretary of Housing and Urban Development.

(b) *Grant Program Established*.--The Secretary shall establish a grant program to make competitive grants to State and local governments to establish mediation programs that assist mortgagors facing foreclosure.

(c) *Mediation Programs*.--A mediation program established using a grant under this section shall--

(1) require participation in the program by--

(A) any mortgagee that initiates a foreclosure proceeding; and

(B) any mortgagor who is subject to a foreclosure proceeding;

(2) require any mortgagee or mortgagor required to participate in the program to make a good faith effort to resolve issues relating to foreclosure proceedings through mediation;

(3) if mediation is not made available to the mortgagor before a foreclosure proceeding is initiated, allow the mortgagor to request mediation at any time before a foreclosure sale;

(4) provide for--

(A) supervision by a State court (or a State court in conjunction with an agency or department of a State or local government) of the mediation program;

(B) selection and training of neutral, third-party mediators by a State court (or an agency or department of the State or local government);

(C) penalties to be imposed by a State court, or an agency or department of a State or local government, if a mortgagee fails to comply with an order to participate in mediation; and

(D) consideration by a State court (or an agency or department of a State or local government) of recommendations by a mediator relating to penalties for failure to fulfill the requirements of the mediation program;

(5) require that each mortgagee that participates in the mediation program make available to the mortgagor, before and during participation in the mediation program, documentation of--

(A) a loan modification calculation or net present value calculation made by the mortgagee in relation to the mortgage using a home loan modification protocol--

(i) developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary; or

(ii) approved by the Secretary;

(B) the loan origination, including any note, deed of trust, or other document necessary to establish the right of the mortgagee to foreclose on the mortgage;

(C) any pooling and servicing agreement that the mortgagee believes prohibits a loan modification;

(D) the payment history of the mortgagor and a detailed accounting of any costs or fees associated with the account of the mortgagor; and

(E) the specific alternatives to foreclosure considered by the mortgagee, including loan modifications, workout agreements, and short sales;

(6) prohibit a mortgagee from shifting the costs of participation in the mediation program, including the attorney's fees of the mortgagee, to a mortgagor;

(7) provide that--

(A) any holder of a junior lien against the property that secures a mortgage that is the subject of a mediation--

(i) be notified of the mediation; and

(ii) be permitted to participate in the mediation; and

(B) any proceeding initiated by a holder of a junior lien against the property that secures a mortgage that is the subject of a mediation be stayed pending the mediation;

(8) provide information to mortgagors about housing counselors approved by the Secretary; and

(9) be free of charge to the mortgagor and mortgagee.

(d) *Record Keeping*.--A State or local government that receives a grant under this section shall keep a record of the outcome of each mediation carried out under the mediation program, including the nature of any loan modification made as a result of participation in the mediation program.

(e) *Targeting*.--A State that receives a grant under this section may establish--

(1) a State-wide mediation program; or

(2) a mediation program in a specific locality that the State determines has a high need for such program due to--

(A) the number of foreclosures in the locality; or

(B) other characteristics of the locality that contribute to the number of foreclosures in the locality.

(f) *Federal Share*.--The Federal share of the cost of a mediation program established using a grant under this section may not exceed 50 percent.

(g) *Authorization of Appropriations*.--There are authorized to be appropriated to carry out this section--

(1) $80,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for each of fiscal years 2011 through 2013.

SEC. 5. OVERSIGHT OF PUBLIC AND PRIVATE EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) *Definitions*.--In this section--

(1) the term ``heads of appropriate agencies'' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Director of the Office of Thrift Supervision, and a representative of State banking regulators selected by the Secretary of Housing and Urban Development;

(2) the term ``mortgagee'' means--

(A) an original lender under a mortgage;

(B) any servicers, affiliates, agents, subsidiaries, successors, or assignees of an original lender; and

(C) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;

(3) the term ``Secretary'' means the Secretary of Housing and Urban Development; and

(4) the term ``servicer'' means any person who collects on a home loan, whether such person is the owner, the holder, the assignee, the nominee for the loan, or the beneficiary of a trust, or any person acting on behalf of such person.

(b) *Monitoring of Home Loans*.--

(1) IN GENERAL.--The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor--

(A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures to better understand other critical aspects of the mortgage market; and

(B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.

(2) REPORT TO CONGRESS.--Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that--

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary--

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) *National Database on Defaults and Foreclosures*.--

(1) IN GENERAL.--The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that--

(A) provides information to Federal regulatory agencies on--

(i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;

(ii) the factors associated with such higher rates; and

(iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and

(B) provides information to Federal, State, and local governments on loans, defaults, foreclosure initiations, foreclosure completions, and sheriff sales that--

(i) is not otherwise readily available;

(ii) would allow for a better understanding of local, regional, and national trends in delinquencies, defaults, and foreclosures; and

(iii) helps improve public policies that reduce defaults and foreclosures.

(2) CONSIDERATIONS.--In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access to information obtained under subsection (d).

(3) REPORT TO CONGRESS ON NATIONAL DATABASE.--Not later than 12 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains--

(A) the recommendations developed under paragraph (1); and

(B) an estimate of the cost of maintaining the database described in paragraph (1).

(d) *Provision of Data*.--

(1) DATA REPORT REQUIRED.--Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in a calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the

Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.

(2) CONTENTS OF REPORT.--Each report submitted under paragraph (1) shall contain data that--

(A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including--

(i) the year of origination;

(ii) the agency code of the originator;

(iii) the respondent identification number of the originator; and

(iv) the identifying number for the loan;

(B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--

(i) the loan-to-value ratio at the time of origination for each mortgage on the property;

(ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and

(iii) any other loan or loan underwriting characteristics determined by the Secretary to be necessary in order to meet the requirements of paragraph (1) and that are not already available to the Secretary through a national mortgage database;

(C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--

(i) whether such home loan was in delinquency at any point in such 12-month period; and

(ii) whether any foreclosure proceeding was initiated on such home loan during such 12-month period;

(D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a foreclosure proceeding was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

(E) include information relating to foreclosures, including--

(i) the date of all foreclosures initiated by the mortgagee or servicer; and

(ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure proceedings were initiated;

(F) for a home loan that is in foreclosure, include information on all actions, including

loan modifications, taken to resolve the problem that led to the initiation of foreclosure proceedings and all actions undertaken prior to initiation of a foreclosure proceeding to resolve a delinquency or default;

(G) identify each home loan for which a foreclosure proceeding was completed in the preceding 12 months, including--

(i) foreclosure proceedings initiated in such 12-month period; and

(ii) the date of the foreclosure completion; and

(H) include any other information that the Secretary determines is necessary to carry out this section.

(3) COMPLIANCE PLAN AND REPORT.--The Secretary, in consultation with the heads of appropriate agencies, shall--

(A) develop a plan to monitor the compliance with the requirements established in this subsection by mortgagees and servicers; and

(B) submit to Congress a report on such plan.

(e) *Consolidated Database*.--The Federal Financial Institutions Examination Council shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this subsection.

(f) *Authorization of Appropriations*.--There are authorized to be appropriated to carry out this section--

(1) $5,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for each of fiscal years 2011 through 2013.

SEC. 6. HOUSING TRUST FUND.

From funds received by the Secretary of the Treasury from the sale of warrants under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.), the Secretary of the Treasury shall transfer and credit $1,000,000,000 to the Housing Trust Fund established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4568) for use in accordance with such section

HELPING UNEMPLOYED WORKERS KEEP THEIR HOMES

A New Tool to Project Availability of Unemployment Benefits

Public/Private Partnerships Making a Difference

To help unemployed workers keep their homes, the Department of Labor is currently partnering with the Federal Reserve Bank, the Department of Treasury, Fannie Mae, Freddie Mac, and the HOPE NOW Alliance, a private sector, broad-based group whose mission is to maximize homeownership while minimizing foreclosures and to keep Americans in their homes. Recent work has focused on how to specifically help individuals who have become unemployed as a result of the economic downturn, many of whom are now receiving unemployment benefits.

American Recovery and Reinvestment Act: New Options

As a result of new programs created by the American Recovery and Reinvestment Act, such as the Making Home Affordable's Home Affordable Modification Program (HAMP), new loan modification options are available for borrowers. These programs have specific guidelines on how to treat a borrower's income, including unemployment income, for purposes of modifying an individual's mortgage loan. Under HAMP, for example, the servicer is to determine that the unemployment income will continue for at least nine (9) months. For more information regarding HAMP, visit: https://www.hmpadmin.com/portal/index.html.

Treating Unemployment Benefits as an Income Source

Previously, it was a challenge for individuals receiving unemployment benefits to demonstrate projected income for a nine (9) month period. In normal economic times, most UI beneficiaries only receive up to twenty-six (26) weeks of benefits under the regular Unemployment Insurance (UI) program, or about six-and-a-half months of income. As a result of the economic downturn, Congress passed new provisions for extending and expanding UI benefits. Depending on the level of unemployment in a state, the potential length of benefits an individual can receive is now seventy-nine (79) weeks, or about 20 months. Differing state UI laws and unemployment levels, as well as the individual claimant's circumstances, may mean the potential length of benefits for a specific individual is lower than 79 weeks.

Below is a breakdown of the current unemployment insurance programs that make up the 79 week total.

- The regular UI program's maximum weeks of entitlement is generally 26 weeks.
- The Extended Unemployment Compensation (EUC) program has a maximum of either up to 20 or up to 33 weeks depending upon the unemployment rate in the state. Congress is currently considering further extensions of benefits under this program for high unemployment states.
- The Extended Benefit program has a maximum of up to 13 or 20 weeks depending upon the unemployment rate in the state and the state law governing the EB program.

A New Tool for Mortgage Companies and Servicers

To support mortgage companies participating in HAMP better understand the unemployment benefits an individual may receive under the three different programs, the Department of Labor has developed an on-line tool to support projecting potential eligibility for unemployment benefits over time. Using the information from the unemployment claimant's monetary determination letter received from the state in which the individual filed for benefits, the new tool, named the **Unemployment Benefit Estimation Tool,** can be used by mortgage companies, servicers, investors, as well as other stakeholders, in estimating an individual's potential UI benefits and the potential duration for receiving benefits. It is important to note that eligibility for unemployment benefits must be determined on a week to week basis. Therefore, the tool projects potential benefits for an individual.

Individuals applying for unemployment benefits receive a monetary determination letter from the state in which they reside which identifies the amount of unemployment benefits they are eligible to receive and the effective date of the claim. The new on-line tool uses the information provided in the monetary determination letter and the state of residence to calculate individual specific information on projected unemployment insurance benefits that will include:

- Potential total weeks of UI eligibility for all currently funded unemployment insurance programs, except Trade Readjustment Allowance benefits (see below);
- The effective date and the potential ending date of the claim;
- The individual's weekly benefit amount; and,
- The total potential benefit dollars to be paid for an individual over the full life of their claim (includes regular UI, Emergency Unemployment Compensation (EUC), and any Extended Benefits (EB) available in the state).

The **Unemployment Benefit Estimation Tool** is easy to use and can be found at www.doleta.gov/unemploy in the "Quick Links" section under "Other Resources."

Other Services and Benefits for UI Claimants

- **One-Stop Career Centers**

In addition to receiving unemployment benefits, UI claimants are referred to One-Stop Career Centers (these have different names in different locations around the country) for employment and training services to help them become reemployed. Services include career information and guidance, skills assessments, job search assistance, technology literacy, referrals to jobs, and training to gain both basic and occupational skills to help individuals return successfully to the labor market. For more information on services available through One-Stop Career Centers and to find One-Stop locations, ETA's Worker Reemployment Portal provides easy to access information at: http://www.careeronestop.org/ReEmployment/.

- **Trade Adjustment Assistance/Trade Readjustment Allowance Benefits**

Some unemployed workers may be eligible for benefits and services under the Trade Adjustment Assistance (TAA) program because they are unemployed as a result of foreign trade. Under the TAA program, individuals may be entitled to additional income support called a Trade

Readjustment Allowance (TRA), similar to unemployment insurance, if they are participating in an approved training program. The TRA weekly benefit amount is the generally the same amount as the UI amount.

Trade Readjustment Allowances (TRA) are available to provide income support to individuals while they are participating in full time training. TRA benefits are defined in two (2) categories: Basic TRA and Additional TRA. Each category has its own set of eligibility requirements.

- Basic TRA is payable if the worker is enrolled or participating in TAA training, has completed such training, or has obtained a waiver of such training requirement.
- Additional TRA is payable only if the worker is participating in TAA approved training.

In general, certified workers may be eligible for 104 weeks of income support (up to 130 weeks if remedial education is required), usually broken out as follows:

- Up to 26 weeks of state unemployment insurance (UI) compensation,
- Followed by 26 weeks of basic TRA, and
- Up to 52 weeks of additional TRA to assist the worker in completing a TAA training program.
- Certified workers who must undergo remedial education as a part of their training plan may be eligible for up to 26 weeks additional weeks of additional TRA for any weeks the individual must undergo remedial education. The worker is eligible for one week of these 26 weeks for each week that the worker's participation in remedial education extends their training program.

Lenders and others should ask individuals if they are eligible for these benefits. Individuals eligible for TRA benefits will receive a separate monetary determination for TRA entitlement. Individuals will not receive both UI and TRA at the same time. A TRA monetary determination indicates the potential of additional benefits once all UI entitlement is exhausted or in lieu of UI in some cases. States have different policies and may not take a TRA claim or issue a TRA monetary determination until individuals have exhausted their UI entitlement. Similar to the regular unemployment program, eligibility is determined on a weekly basis. Benefit receipt is subject to individuals meeting the individual state's eligibility criteria.

FORECLOSURE/ MEDIATION PROGRAMS IN FORCE

CALIFORNIA

Cal. Civ. Code §2923.5

(a) (1) A mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to Section 2924 until 30 days after contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g).

(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default filed pursuant to Section 2924 shall include a declaration from the mortgagee, beneficiary, or authorized agent that it has contacted the borrower, tried with due diligence to contact the borrower as required by this section, or the borrower has surrendered the property to the mortgagee, trustee, beneficiary, or authorized agent.

(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that either:

(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.

(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made.

(d) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(f) A borrower may designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized agent is subject to approval by the borrower.

(g) A notice of default may be filed pursuant to Section 2924 when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph

(2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgagee, beneficiary, or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgagee, beneficiary, or authorized agent may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgagee, beneficiary, or
authorized agent.

(C) A mortgagee, beneficiary, or authorized agent satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt requested.

(4) The mortgagee, beneficiary, or authorized agent shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgagee, beneficiary, or authorized agent has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(h) Subdivisions (a), (c), and (g) shall not apply if any of the following occurs:

(1) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(2) The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(3) The borrower has filed for bankruptcy, and the proceedings have not been finalized.

(i) This section shall apply only to loans made from January 1, 2003, to December 31, 2007, inclusive, that are secured by residential real property and are for owner-occupied residences. For purposes of this subdivision, "owner-occupied" means that the residence is the principal residence of the borrower.

(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

Cal. Civ. Code §§2923.52-2923.53

2923.52. (a) Notwithstanding paragraph (3) of subdivision (a) of Section 2924, a mortgagee, trustee, or other person authorized to take sale shall not give notice of sale until at least 90 days after the lapse of three months as set forth in paragraph (2) of subdivision (a) of Section 2924, in order to allow the parties to pursue a loan modification to prevent foreclosure, if all of the following conditions exist:

(1) The loan was recorded during the period of January 1, 2003, to January 1, 2008, inclusive, and is secured by residential real property.

(2) The loan at issue is the first mortgage or deed of trust that the property secures.

(3) The borrower occupied the property as the borrower's principal residence at the time the loan became delinquent.

(4) The notice of default has been recorded on the property.

(b) This section does not apply to loans serviced by a mortgage loan servicer if that mortgage loan servicer has obtained a temporary or final order of exemption pursuant to Section **2923.53** that is current and valid at the time the notice of sale is given.

(c) This section does not apply to loans made, purchased, or serviced by:

(1) A California state or local public housing agency or authority, including state or local housing finance agencies established under Division 31 (commencing with Section 50000) of the Health and Safety **Code** and Chapter 6 (commencing with Section 980) of Division 4 of the Military and Veterans **Code.**

(2) Loans that are collateral for securities purchased by an agency or authority described in paragraph (1).

(d) This section shall become operative 14 days after the issuance of regulations, which shall include the form of the application for mortgage loan servicers, by the commissioner pursuant to subdivision (d) of Section **2923.53.**

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

2923.52. (a) Notwithstanding paragraph (3) of subdivision (a) of Section 2924, a mortgagee, trustee, or other person authorized to take sale shall not give notice of sale until at least 90 days after the lapse of three months as set forth in paragraph (2) of subdivision (a) of Section 2924, in order to allow the parties to pursue a loan modification to prevent foreclosure, if all of the following conditions exist:

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(2) The loan at issue is the first mortgage or deed of trust that the property secures.

(3) The borrower occupied the property as the borrower's principal residence at the time the loan became delinquent.

(4) The notice of default has been recorded on the property.

(b) This section does not apply to loans serviced by a mortgage loan servicer if that mortgage loan servicer has obtained a temporary or final order of exemption pursuant to Section **2923.53** that is current and valid at the time the notice of sale is given.

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(1) A California state or local public housing agency or authority, including state or local housing finance agencies established under Division 31 (commencing with Section 50000) of the Health and Safety **Code** and Chapter 6 (commencing with Section 980) of Division 4 of the Military and Veterans **Code**.

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(d) This section shall become operative 14 days after the issuance of regulations, which shall include the form of the application for mortgage loan servicers, by the commissioner pursuant to subdivision (d) of Section **2923.53**.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

2923.53. (a) A mortgage loan servicer that has implemented a comprehensive loan modification program that meets the requirements of this section shall have the loans that it services exempted from the provisions of Section **2923.52**, upon order of the commissioner. A comprehensive loan modification program shall include all of the following features:

(1) The loan modification program is intended to keep borrowers whose principal residences are homes located in California in those homes when the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(2) The loan modification program targets a ratio of the borrower' s housing-related debt to the borrower's gross income of 38 percent or less, on an aggregate basis in the program.

(3) The loan modification program includes some combination of the following features:

(A) An interest rate reduction, as needed, for a fixed term of at least five years.

(B) An extension of the amortization period for the loan term, to no more than 40 years from the original date of the loan.

(C) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

(D) Reduction of principal.

(E) Compliance with a federally mandated loan modification program.

(F) Other factors that the commissioner determines are appropriate. In determining those factors, the commissioner may consider efforts implemented in other jurisdictions that have resulted in a reduction in foreclosures.

(4) When determining a loan modification solution for a borrower under the loan modification program, the servicer seeks to achieve long-term sustainability for the borrower.

(b) (1) A mortgage loan servicer may apply to the commissioner for an order exempting loans that it services from Section **2923.52**. If the mortgage loan servicer elects to apply for an order, the application shall be in the form and manner determined by the commissioner.

(2) Upon receipt of an initial application for exemption under this section, the commissioner shall immediately notify the applicant of the date of receipt of the application and shall issue a temporary order, effective from that date of receipt, exempting the

mortgage loan servicer from the provisions of subdivision (a) of Section **2923.52**. The temporary order shall remain in effect until a final order has been issued by the commissioner pursuant to paragraph (3). If the initial application for exemption is denied pursuant to paragraph (3), the temporary order shall remain in effect for 30 days after the date of denial.

(3) Within 30 days of receipt of an initial or revised application, the commissioner shall make a final determination on whether the application meets the criteria of subdivision (a). If, after review of the application, the commissioner concludes that the mortgage loan servicer has a comprehensive loan modification program that meets the requirements of subdivision (a), the commissioner shall issue a final order exempting the mortgage loan servicer from the requirements of Section **2923.52**. If the commissioner concludes that the loan modification program does not meet the requirements of subdivision (a), the application for exemption shall be denied and a final order shall not be issued.

(4) A mortgage loan servicer may submit a revised application if its application for exemption is denied.

(c) The commissioner may revoke a final order, upon reasonable notice and an opportunity to be heard, if the mortgage loan servicer has submitted a materially false or misleading application or if the approved loan modification program has been materially altered from the loan modification program on which the exemption was based. A revocation by the commissioner shall not be retroactive.

(d) The commissioner shall adopt, no later than 10 days after the date this section takes effect, emergency and final regulations to clarify the application of this section and Section **2923.52**, including the creation of the application for mortgage loan servicers and requirements regarding the reporting of loan modification data by mortgage loan servicers.

(e) Three months after the first exemption is issued pursuant to subdivision (b) by order of any commissioner specified in paragraph (1) of subdivision (j), the Secretary of Business, Transportation and Housing shall submit a report to the Legislature regarding the details of the actions taken to implement this section and the numbers of applications received and orders issued. The secretary shall submit an additional report six months from the date of the submission of the first report and every six months thereafter. Within existing resources, the commissioners shall collect, from some or all mortgage loan servicers, data regarding loan modifications accomplished pursuant to this section and shall make the data available on an Internet Web site at least quarterly.

(f) The Secretary of Business, Transportation and Housing shall maintain on an Internet Web site a publicly available list disclosing the final orders granting exemptions, the date of each order, and a link to Internet Web sites describing the loan modification programs.

(g) Until January 1, 2010, the commissioner is authorized to contract for goods and services necessary to implement the provisions of this section and Section **2923.52**, and any such contract shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract **Code**. Not less than 30 days prior to awarding any contract under this section, the commissioner shall provide the pending contract documents to the Joint Legislative Budget Committee.

(h) Any person who violates any provision of this section or

Section **2923.52** shall be deemed to have violated his or her license law as it relates to these provisions.

(i) Nothing in this section or Section **2923.52** shall require a servicer to violate contractual agreements for investor-owned loans or provide a modification to a borrower who is not willing or able to pay under the modification.

(j) The submission of an application for an exemption under this section, the reliance upon such an exemption, or the provision to the commissioner of data related to the loan modification program shall not confer on the commissioner visitorial authority over a federally chartered financial institution. Nothing in this subdivision is intended to affect the authority of the commissioner over a federally chartered financial institution pursuant to federal law or regulation.

(k) For purposes of this section and Sections **2923.52** and **2923**.54:

(1) "Commissioner" means any of the following:

(A) The Commissioner of Corporations for licensed residential mortgage lenders and servicers and licensed finance lenders and brokers servicing mortgage loans and any other entities servicing mortgage loans that are not described in subparagraph (B) or (C).

(B) The Commissioner of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state servicing mortgage loans.

(C) The Real Estate Commissioner for licensed real estate brokers servicing mortgage loans.

(2) "Housing-related debt" means debt that includes loan principal, interest, property taxes, hazard insurance, flood insurance, mortgage insurance, and homeowner association fees.

(3) "Mortgage loan servicer" means a person or entity that receives or has the right to receive installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan or deed of trust, and performs services relating to that receipt or enforcement as the holder of the note or on behalf of the holder of the note evidencing that loan.

(l) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

2923.53. (a) A mortgage loan servicer that has implemented a comprehensive loan modification program that meets the requirements of this section shall have the loans that it services exempted from the provisions of Section **2923.52**, upon order of the commissioner. A comprehensive loan modification program shall include all of the following features:

(1) The loan modification program is intended to keep borrowers whose principal residences are homes located in California in those homes when the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(2) The loan modification program targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38 percent or less, on an aggregate basis in the program.

(3) The loan modification program includes some combination of the following features:

(A) An interest rate reduction, as needed, for a fixed term of at least five years.

(B) An extension of the amortization period for the loan term, to no more than 40 years from the original date of the loan.

(C) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

(D) Reduction of principal.

(E) Compliance with a federally mandated loan modification program.

(F) Other factors that the commissioner determines are appropriate. In determining those factors, the commissioner may consider efforts implemented in other jurisdictions that have resulted in a reduction in foreclosures.

(4) When determining a loan modification solution for a borrower under the loan modification program, the servicer seeks to achieve long-term sustainability for the borrower.

(b) (1) A mortgage loan servicer may apply to the commissioner for an order exempting loans that it services from Section **2923.52**. If the mortgage loan servicer elects to apply for an order, the application shall be in the form and manner determined by the commissioner.

(2) Upon receipt of an initial application for exemption under this section, the commissioner shall immediately notify the applicant of the date of receipt of the application and shall issue a temporary order, effective from that date of receipt, exempting the mortgage loan servicer from the provisions of subdivision (a) of Section **2923.52**. The temporary order shall remain in effect until a final order has been issued by the commissioner pursuant to paragraph (3). If the initial application for exemption is denied pursuant to paragraph (3), the temporary order shall remain in effect for 30 days after the date of denial.

(3) Within 30 days of receipt of an initial or revised application, the commissioner shall make a final determination on whether the application meets the criteria of subdivision (a). If, after review of the application, the commissioner concludes that the mortgage loan servicer has a comprehensive loan modification program that meets the requirements of subdivision (a), the commissioner shall issue a final order exempting the mortgage loan servicer from the requirements of Section **2923.52**. If the commissioner concludes that the loan modification program does not meet the requirements of subdivision (a), the application for exemption shall be denied and a final order shall not be issued.

(4) A mortgage loan servicer may submit a revised application if its application for exemption is denied.

(c) The commissioner may revoke a final order, upon reasonable notice and an opportunity to be heard, if the mortgage loan servicer has submitted a materially false or misleading application or if the approved loan modification program has been materially altered from the loan modification program on which the exemption was based. A revocation by the commissioner shall not be retroactive.

(d) The commissioner shall adopt, no later than 10 days after the date this section takes effect, emergency and final regulations to clarify the application of this section and Section **2923.52**, including the creation of the application for mortgage loan servicers and requirements regarding the reporting of loan modification data by mortgage loan servicers.

(e) Three months after the first exemption is issued pursuant to

subdivision (b) by order of any commissioner specified in paragraph (1) of subdivision (j), the Secretary of Business, Transportation and Housing shall submit a report to the Legislature regarding the details of the actions taken to implement this section and the numbers of applications received and orders issued. The secretary shall submit an additional report six months from the date of the submission of the first report and every six months thereafter. Within existing resources, the commissioners shall collect, from some or all mortgage loan servicers, data regarding loan modifications accomplished pursuant to this section and shall make the data available on an Internet Web site at least quarterly.

(f) The Secretary of Business, Transportation and Housing shall maintain on an Internet Web site a publicly available list disclosing the final orders granting exemptions, the date of each order, and a link to Internet Web sites describing the loan modification programs.

(g) Until January 1, 2010, the commissioner is authorized to contract for goods and services necessary to implement the provisions of this section and Section **2923.52**, and any such contract shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract **Code**. Not less than 30 days prior to awarding any contract under this section, the commissioner shall provide the pending contract documents to the Joint Legislative Budget Committee.

(h) Any person who violates any provision of this section or Section **2923.52** shall be deemed to have violated his or her license law as it relates to these provisions.

(i) Nothing in this section or Section **2923.52** shall require a servicer to violate contractual agreements for investor-owned loans or provide a modification to a borrower who is not willing or able to pay under the modification.

(j) The submission of an application for an exemption under this section, the reliance upon such an exemption, or the provision to the commissioner of data related to the loan modification program shall not confer on the commissioner visitorial authority over a federally chartered financial institution. Nothing in this subdivision is intended to affect the authority of the commissioner over a federally chartered financial institution pursuant to federal law or regulation.

(k) For purposes of this section and Sections **2923.52** and **2923**.54:

(1) "Commissioner" means any of the following:

(A) The Commissioner of Corporations for licensed residential mortgage lenders and servicers and licensed finance lenders and brokers servicing mortgage loans and any other entities servicing mortgage loans that are not described in subparagraph (B) or (C).

(B) The Commissioner of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state servicing mortgage loans.

(C) The Real Estate Commissioner for licensed real estate brokers servicing mortgage loans.

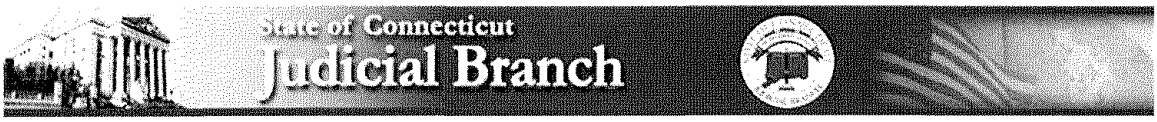
(2) "Housing-related debt" means debt that includes loan principal, interest, property taxes, hazard insurance, flood insurance, mortgage insurance, and homeowner association fees.

(3) "Mortgage loan servicer" means a person or entity that receives or has the right to receive installment payments of principal, interest, or other amounts placed in escrow, pursuant to

the terms of a mortgage loan or deed of trust, and performs services relating to that receipt or enforcement as the holder of the note or on behalf of the holder of the note evidencing that loan.

(l) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

CONNECTICUT



Attorneys
Case Look-up
Courts
Directories
Educational Resources
E-Services
Español
FAQ's
Juror Information
Online Media Resource Center
Opinions
Opportunities
Self-Help
Home

SEARCH

Notice regarding the Foreclosure Mediation Program
P.A. 09-209 An Act Concerning Implementation of the S.A.F.E. Mortgage Licensing Act (Sections 34 and 35)

Quick Links
Foreclosure/Mediation Program

The Foreclosure Mediation Program has changed as a result of P.A. 09-209, passed by the Connecticut legislature during its 2009 session. In order to qualify for this program, the borrower/homeowner must be an owner-occupant of a one, two, three or four family residential property. The property must be the homeowner's primary residence and located in Connecticut. The lender must serve a Notice to Homeowner, JD-CV-94, Foreclosure Mediation Certificate, JD-CV-108 and Appearance, JD-CL-12 form to the homeowner when it commences the foreclosure action.

If the homeowner qualifies and files an Appearance, the homeowner and lender will meet with a mediator employed by the Judicial Branch to try to reach an agreement. The mediation process will address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, assignment of law days, assignment of sale date, restructuring of the mortgage debt and foreclosure by decree of sale. The mediators will be trained in all relevant aspects of the law, have knowledge of community-based resources and mortgage assistance programs and refer homeowners to these programs when appropriate.

For additional information on the foreclosure mediation program, please contact Roberta Palmer, Superior Court Operations, Court Operations Unit at (860) 263-2734 or email her at Roberta.Palmer@jud.ct.gov.

Click here to obtain the Notice to Homeowner, JD-CV-94, Foreclosure Mediation Certificate, JD-CV-108 and Appearance, JD-CL-12 form that will be required to be served with foreclosure actions to which the act applies.

Foreclosure/Mediation Program FAQs

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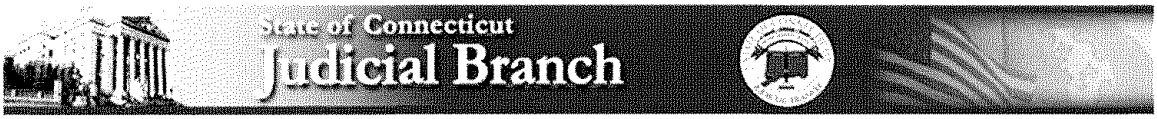

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Foreclosure Mediation Program

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Attorney Frequently Asked Questions

Revised July 13, 2009

1. What is the Foreclosure Mediation Program?

The Chief Court Administrator has established the Foreclosure Mediation Program to assist lenders and homeowners achieve a mutually agreeable resolution of a mortgage foreclosure action through the mediation process. Foreclosure mediation certificate forms will not be accepted on or after July 1, 2010.

2. What foreclosure cases qualify for the Foreclosure Mediation Program?

The Foreclosure Mediation Program applies to mortgage foreclosure actions that have a return date on or after July 1, 2008. The mortgage foreclosure must be filed against homeowners of one- to-four family, owner-occupied residential property located in the state of Connecticut. The property must be the primary residence of the homeowner.

3. Is participation in the Foreclosure Mediation Program mandatory?

Participation in mediation is mandatory for all eligible foreclosure cases where the homeowner/borrower has filed an appearance.

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4. What forms are required for the Foreclosure Mediation Program?

The forms prescribed by the Chief Court Administrator are the Foreclosure Mediation Notice to Homeowner (JD-CV-94), the Foreclosure Mediation Certificate (JD-CV-108) and the Appearance form (JD-CL-12). These forms are available at each Judicial District Clerk's office, Court Service Centers or online at http://www.jud2.ct.gov/webforms/.

5. How would the homeowner become aware of the Foreclosure Mediation Program?

The mortgagee must give notice to the mortgagor of the Foreclosure Mediation Program by attaching to the front of the foreclosure writ, summons and complaint a copy of the Foreclosure Mediation Notice to Homeowner (JD-CV-94) and a Foreclosure Mediation Certificate (JD-CV-108). The mortgagee must also attach an Appearance form (JD-CL-12).

6. What happens if the Notice, the Certificate and the Appearance forms are not served on the homeowner with the writ, summons and complaint?

The court may issue an order that no judgment may enter for fifteen (15) days during which period the homeowner may submit a Foreclosure Mediation Certificate form to the court.

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7. Does participation in the Foreclosure Mediation Program stay the foreclosure action?

Participation in the Foreclosure Mediation Program does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with applicable rules of the court. However, no judgment of foreclosure may be entered until the mediation period has expired or otherwise terminated, as provided in the statute.

8. How long is the mediation period?

The mediation period commences when the court sends notice scheduling the first mediation session. It must conclude not more than sixty (60) days after the return date for the foreclosure action, except that the court may extend the mediation period by not more than thirty (30) days, or shorten the mediation period.

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9. When will the first mediation session be held?

The first mediation session must be held no later than fifteen (15) business days after the court sends notice to all parties scheduling the first mediation session.

10. What issues will be addressed at the mediation?

The Foreclosure Mediation will address all issues including, but not limited to:

- Reinstatement of the mortgage
- Restructuring of the mortgage debt
- Assignment of law days
- Assignment of sale date
- Foreclosure by decree of sale

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11. Do I need to have my client present at the mediation session?

The mortgagor and the mortgagee must appear in person at each mediation session and must have authority to agree to a proposed settlement. However, if the mortgagee is represented by counsel, said counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available during the mediation session by telephone or electronic means. If the mortgagor is represented, both client and counsel must be present.

12. Who may I contact if I have questions?
If you have questions about the Foreclosure Mediation Program, please contact Roberta Palmer at 860-263-2734, or email her at Roberta.Palmer@jud.ct.gov.

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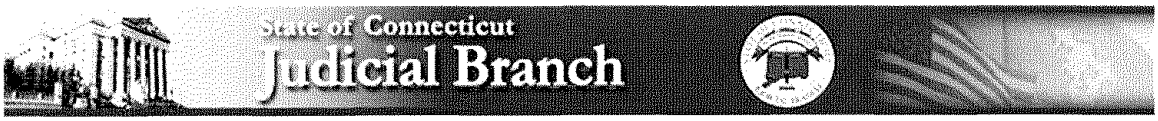

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Homeowner Frequently Asked Questions

Revised July 13, 2009

1. What is the Foreclosure Mediation Program?

The Foreclosure Mediation Program has been set up to assist any homeowner/borrower whose 1, 2, 3 or 4 family owner-occupied residential property is the subject of a mortgage foreclosure action. The property must be located in the state of Connecticut and be the homeowner's primary residence. The homeowner will meet with a mediator and the lender to try and reach an agreement.

2. What is mediation?

Mediation is a process by which a neutral third party (mediator) assists the homeowner and lender in reaching a fair, voluntary, negotiated agreement. The mediator does not decide who is right or wrong.

Top

3. Who are the Mediators?
The foreclosure mediators are Judicial Branch employees who are trained in mediation and foreclosure law. The mediators have knowledge of different community-based resources and mortgage assistance programs.

4. How do I qualify for foreclosure mediation?
The 1, 2, 3 or 4 family owner-occupied, residential property that is being foreclosed must be the primary residence of the homeowner, and the homeowner must be the borrower. The mortgage foreclosure action must have a return date on or after July 1, 2008.

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5. What do I have to do to take part in the Foreclosure Mediation Program?
The homeowner/borrower must file a Foreclosure Mediation Certificate form (JD-CV-108), and an Appearance form (JD-CL-12). These forms must be filed not more than fifteen (15) days from the return date on the Summons. Forms are available at any Superior Court clerk's office, Court Service Center or online at http://www.jud2.ct.gov/webforms/.

6. Do I need a lawyer to take part in the Foreclosure Mediation Program?
No, you do not have to be represented by a lawyer to take part in this program.

7. Do all borrowers who signed the mortgage have to attend the mediation session?
Yes, all borrowers must come to the mediation session; for example, if a husband and wife signed the mortgage then both will have to come to the mediation.

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8. Am I required to take part in mediation?
Yes, taking part in mediation is required for all eligible homeowners who file an appearance.

9. Is there an application fee?
There is no application fee for this program.

10. Is the mediation confidential?
Yes, any discussions in the mediation are confidential.

Top

11. What do I need to bring to the mediation session?

- Proof of income, if employed; for example, a current pay stub;
- List of expenses;
- Copies of any completed application(s) for mortgage or financial assistance; and
- Any other information that may be helpful.

12. Where will the mediation sessions be held?
The mediation session(s) will be held at courthouses located throughout the State.

Top

13. Does this mean I won't lose my house due to foreclosure?

The Foreclosure Mediation Program does not stop or suspend the foreclosure. The homeowner is still obligated to respond to the foreclosure action and may still be at risk of losing their property to foreclosure.

14. Who should I contact if I have more questions about the Foreclosure Mediation Program?

If you have questions about the Foreclosure Mediation Program, please contact Roberta Palmer at 860-263-2734, or email her at Roberta.Palmer@jud.ct.gov.

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APPEARANCE

JD-CL-12 Rev. 5/09
P.B. §§ 3-1 thru 3-6, 3-8

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

NOTICE TO SELF-REPRESENTED PARTIES (PRO SE)
A self-represented party is a person who represents himself or herself. You must let the Clerk's Office know if you change your address by filling out this form.

☐ Judicial District ☐ Housing Session ☐ Geographic Area ☐ Small Claims

Address of Court *(Number, street, town and zip code)*

Docket number

Return date

Scheduled court date *(Criminal/Motor Vehicle Matters)*

Note: If you are a self-represented party and you filed an appearance before and you are filing this only to let the court know that you have changed your address, check the box below:

☐ *I am filing this appearance only to let the court know that I have changed my address. My new address is below.*

INSTRUCTIONS

1. *Type or print.*
2. ***For Criminal and Motor Vehicle cases:*** *Mail or deliver a copy of the appearance to the prosecutor, fill out the Certification at bottom and file the original with the clerk. (Practice Book (P.B.) Sections 3-4, 3-5)*
3. ***For cases in Judicial District Courts, except criminal cases:*** *File only the original with the clerk. For criminal cases, see instruction #2.*
4. ***For cases in Geographical Area Courts, except criminal cases:*** *File the original and enough copies for each other party with the clerk. For criminal cases, see instruction #2.*
5. ***For Eviction (Summary Process) cases:*** *Follow the instruction for #3 or #4 above, and mail a copy to the attorney for the plaintiff, or if the plaintiff does not have an attorney, mail a copy to the plaintiff. Fill out the Certification at the bottom. (P.B. Sec. 3-5(a))*
6. ***For Small Claims cases:*** *File the original with the Small Claims area or Housing Session address. Mail or deliver a copy to the attorney or self-represented party and fill out the Certification at the bottom.*
7. ***For Appearances in place of (in-lieu-of) another attorney, law firm, or self-represented party:*** *Fill out the Certification at the bottom. (P.B. Sec. 3-8)*
8. *If a party who has been defaulted for failure to appear files an appearance before the entry of judgment after default, the default will automatically be set aside by the clerk. (P.B. Sec. 17-20)*
9. ***For Juvenile cases:*** *Do not use this form. Use form JD-JM-13 Appearance, Juvenile Matters.*

Name of case *(Plaintiff vs. Defendant)* _____

Please Enter the Appearance Of

Juris number of attorney or firm	Name of self-represented party *(See "Notice to Self-Represented Parties" at top)*, or name of official, firm, professional corporation, or individual attorney

Mailing Address *(Number, street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your juris number. That address cannot be changed in this form.)*	Post office box	Telephone number *(Area code first)*

City/town	State	Zip code	Fax number *(Area code first)*	E-mail address

in the case named above for: *("x" one of the following parties)*

☐ The Plaintiff *(includes the person suing another person).*
☐ All Plaintiffs.
☐ The following Plaintiff(s) only: _____
☐ The Defendant *(includes the person being sued or charged with a crime).*
☐ The Defendant for the purpose of the bail hearing only *(in criminal and motor vehicle cases only).*
☐ All Defendants.
☐ The following Defendant(s) only: _____
☐ Other *(Specify)* _____

Note: If other counsel or a self-represented party have already filed an appearance for the party or parties "x'd" above, put an "x" in 1 of these 2 boxes:

☐ *This appearance is in place of the appearance of the attorney or firm or self-represented party on file (P.B. Sec. 3-8)* ***OR*** _____ *(Name and Juris Number)*

☐ *This appearance is in addition to an appearance already on file.*

Signed *(Individual attorney or self-represented party)* ▶	Name of person signing at left *(Print or type)*	Date signed

Certification

This certification has to be filled out only in eviction cases; for "in place of" appearances; in criminal cases; and in small claims matters.

I certify that I mailed or delivered a copy of this Appearance form to:

☐ All counsel and self-represented parties of record as listed below and on any additional sheet(s). *(For evictions (P.B. Sec. 3-5(a)), criminal actions (P.B. Sec. 3-5(c)) and small claims matters)*

☐ Counsel or the party whose appearance is to be replaced as listed below and on additional sheet(s). *(For appearances in place of another attorney or firm (P.B. Sec. 3-8))*

Signed *(Individual attorney or self-represented party)* ▶	Date copies mailed or delivered

Name of each party copy was mailed or delivered to *	Address at which copy was mailed or delivered

For Court use only

** If necessary, attach an additional sheet or sheets with the name of each party and the address at which the copy was mailed or delivered to.*

APPEARANCE

FORECLOSURE MEDIATION
NOTICE TO HOMEOWNER
JD-CV-94 Rev. 7-09
C.G.S. § 49-31*l*, PA 09-209

STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL BRANCH
www.jud.ct.gov

FMNORMR

Notice to Homeowner: Availability of Foreclosure Mediation

You have been served with a foreclosure complaint that could cause you to lose your property.

A **Foreclosure Mediation Program** has been set up to help certain homeowners.

You must fill out the attached **Foreclosure Mediation Certificate form, JD-CV-108** and **Appearance form, JD-CL-12** and file them with the Court no later than 15 days from the Return Date on the *Summons* form that was served on you (or delivered to you). If these forms are not attached, you may get them at any Judicial District courthouse or from the Judicial Branch website at *www.jud2.ct.gov/webforms*.

A mediation will be scheduled if:

- you are the **owner-occupant** of a **1, 2, 3 or 4 family residential** property;
- you are the **borrower**;
- the **mortgage** on your owner-occupied residential property is being **foreclosed**;
- the property being foreclosed is your **primary residence**;
- the property is located in **Connecticut**.

Mediation is where a person who does not take sides helps parties try to settle their case.

Judicial Branch mediators will conduct mediation sessions at the courthouse.

There is no application fee for this program.

FORECLOSURE MEDIATION REQUEST
JD-CV-93 Rev. 7-09
C.G.S. § 49-31*l*, P.A. 09-209

STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL BRANCH
www.jud.ct.gov

FMREQ

Instructions to Homeowner Applicant

This form is for foreclosure cases with a return date from July 1, 2008 through June 30, 2009. If the return date in your case is after June 30, 2009, you must use the Foreclosure Mediation Certificate form (JD-CV-108).

If you want to use the Foreclosure Mediation Program and the Return Date in your case is between July 1, 2008 and June 30, 2009:

1. Fill out this Request form and an Appearance form, JD-CL-12 (available at the courthouse or online at www.jud.ct.gov), and **file them with the court not more than 15 days after the return date on the Summons.**
   If you were served with this Foreclosure Mediation Request form after you were served the Summons, you may file this Request and the Appearance form not more than 15 days after this Foreclosure Mediation Request form was served on you or not more than 15 days after the return date on the Summons, whichever is later.
2. You must mail or deliver a copy of the completed Request form and the Appearance form to all parties of record (the plaintiff and all other defendants named on the Summons).

Type or Print Legibly

Name of Case *(**Plaintiff** on Summons vs. **Defendant** on Summons)*

Return Date *(On upper right portion of Summons)*	Judicial District of *(On upper left portion of Summons)*

Homeowner(s) Information

Your Name*(s)*		
Address *(Number, street, town, state, zip code)*		
Telephone Number ( )	Business Phone ( )	Cell Phone ( )

Is this property your primary residence?	☐ Yes	☐ No
Is it a one-to-four family residential property located in Connecticut?	☐ Yes	☐ No
Are you the borrower?	☐ Yes	☐ No
Is this a mortgage foreclosure?	☐ Yes	☐ No

If you answered "No" to any of these questions, please do not submit this Request as you do not qualify for the Foreclosure Mediation Program.

I request foreclosure mediation in my case:

Signed	Print Name of Person Signing	Date Signed

I certify that a copy of this Request was mailed or delivered to all counsel and self-represented *(pro se)* parties of record on

(Date mailed or delivered): _____

Signed *(Attorney or self-represented party)*	Print Name of Person Signing	Telephone Number

Address *(Number, street, town, state, zip code)*

Name and address of each party of record this notice was mailed or delivered to
*(All **Plaintiffs**, **Attorneys, Law Firms** and all other **Defendants** on Summons)**

Name *(Each party served)*	Address *(Where party was served)*

**If necessary, attach additional sheet with name of each party served and the address at which service was made.*

What do I need to bring to the mediation session?

- Proof of income, if employed; for example, a current pay stub;
- A list of your expenses;
- Copies of any completed application(s) for mortgage or financial assistance; and
- Any other information that may be helpful.

Where will the mediation session be held?

The mediation session(s) will be held at courthouses located throughout the State.

Does this mean that I won't lose my house due to foreclosure?

Filing a Foreclosure Mediation Request does not stop or suspend the foreclosure action. The homeowner/borrower is required to respond to the foreclosure action and may still be at risk of losing their property to foreclosure.

Where should I direct questions about the Foreclosure Mediation Program?

Please direct inquiries to:

Roberta Palmer
Superior Court Operations
Court Operations Unit

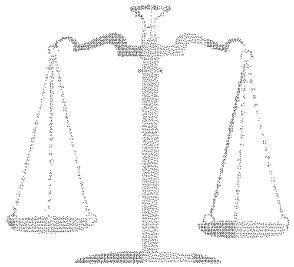
(860) 263-2734, or email
roberta.palmer@jud.ct.gov

JDP-CV-92
Rev. 7/09

FORECLOSURE MEDIATION PROGRAM

JUDICIAL BRANCH
COURT OPERATIONS
225 SPRING STREET
WETHERSFIELD, CT 06109

www.jud.ct.gov



What is the Foreclosure Mediation Program?

The Foreclosure Mediation Program has been set up to assist any homeowner/borrower whose one-to-four family, owner-occupied, residential property is the subject of a mortgage foreclosure action. The property must be located in the state of Connecticut and be the homeowner's primary residence. The homeowner will meet with a mediator and the lender to try to reach an agreement.

What is mediation?

Mediation is a process by which a neutral third party (mediator) assists the homeowner and lender in reaching a fair, voluntary, negotiated agreement. The mediator does not decide who is right or wrong.

Who are the mediators?

The foreclosure mediators are Judicial Branch employees who are trained in mediation and foreclosure law. The mediators have knowledge of different community-based resources and mortgage assistance programs.

How do I qualify for foreclosure mediation?

The one-to-four family residential property that is being foreclosed must be the primary residence of the homeowner, and the homeowner must be the borrower. The mortgage foreclosure action must have a return date on or after July 1, 2008.

How do I apply for foreclosure mediation?

The homeowner/borrower must file a *Foreclosure Mediation Certificate* form (JD-CV-108), and an *Appearance* form (JD-CL-12). These forms must be filed not more than fifteen (15) days after the return date on the *Summons* unless extended by the Court. Forms are available at any Superior Court Clerk's Office, Court Service Center or online at www.jud.ct.gov.

Do I need a lawyer to participate in the Foreclosure Mediation Program?

No, you do not have to be represented by an attorney to participate in this program.

Do all borrowers who signed the mortgage need to attend the mediation session?

Yes, all borrowers must be present at the mediation session; for example, if a husband and wife signed the mortgage then both will need to be present for the mediation.

Am I required to participate in mediation?

Yes, if your mortgage foreclosure Summons has a return date on or after July 1, 2009, and you file an Appearance, and you are eligible, you must take part in mediation.

Is there an application fee?

There is no application fee for this program.

Is the mediation confidential?

Yes, any discussions in the mediation session are confidential.

FORECLOSURE MEDIATION CERTIFICATE
JD-CV-108 New 7-09
P.A. 09-209

STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL BRANCH
www.jud.ct.gov

FMREQ

Instructions to Homeowner Applicant

1. Use this form if return date in your case is on or after July 1, 2009.
2. Fill out this Certificate form and an Appearance form, JD-CL-12 (available at the courthouse or online at *www.jud2.ct.gov/webforms*) and **file them with the court not more than 15 days after the return date on the Summons.**
3. You must mail or deliver a copy of this completed Certificate form to the plaintiff's attorney, or to the plaintiff if the plaintiff is not represented by an attorney.

Type or Print Legibly

Name of case (***Plaintiff*** *on Summons vs.* ***Defendant*** *on Summons)*	Docket number *(To be filled in by court staff)*

Return date *(On upper right portion of Summons)*	Judicial District of *(On upper left portion of Summons)*

Homeowner(s) Information

Your name(s)		
Address *(Number, street, town, state, zip code)*		
Telephone number ( )	Business phone ( )	Cell phone ( )

Is this property your primary residence?	☐ Yes	☐ No
Do you occupy the property?	☐ Yes	☐ No
Is it a 1, 2, 3 or 4 family residential property located in Connecticut?	☐ Yes	☐ No
Are you the borrower?	☐ Yes	☐ No
Is this a mortgage foreclosure?	☐ Yes	☐ No

Signed	Print name of person signing	Date signed

Name and address of each party *(plaintiff's attorney, or the plaintiff if the plaintiff is not represented by an attorney)* this Certificate was mailed or delivered to:*

Name *(Of each party (plaintiff's attorney, or the plaintiff if the plaintiff is not represented by an attorney) copy was mailed or delivered to)*	Address *(At which copy was mailed or delivered)*

**If necessary, attach an additional sheet or sheets with the name of each party (plaintiff's attorney, or the plaintiff if the plaintiff is not represented by an attorney) and the address at which the copy was mailed or delivered to.*

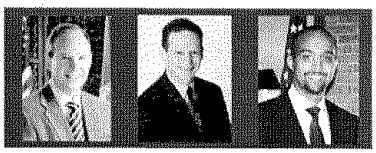
I certify that a copy of this Certificate was mailed or delivered to the plaintiff's attorney, or to the plaintiff if the plaintiff is not represented by an attorney, on *(Date mailed or delivered):* _____

Signed *(Attorney or self-represented party completing form)*	Print name of person signing	Telephone number

Address *(Number, street, town, state, zip code)*

DELAWARE

Delaware Foreclosure Help



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Foreclosure Info
Upcoming Events
Delaware Foreclosure Data

For Homeowners
For Renters
For Communities Recovering
For Families Recovering

Attorney General's Mortgage Hotline
1-800-220-5424
Housing Counseling Contact Information

NEW Residential Mortgage Foreclosure Mediation Program

TIME IS OF THE ESSENCE! Homeowners must take action quickly upon receiving the notice of the program to be sure that they have the time to meet with a housing counselor and complete the necessary documentation. If you have received the notice of the program, please **TAKE ACTION NOW!** Follow the link below to view the notice and learn what steps you must take to participate in the program.
Mediation Program Notice (English)
Mediation Program Notice (Spanish)

Program Description:

The new foreclosure mediation program creates a process by which homeowners are connected to housing counseling and provided an opportunity to participate in a mediation session prior to the Court entering a judgment of foreclosure. This program gives homeowners a great opportunity to work with housing counselors, their lender and a neutral mediator to reach a positive alternative agreement and avoid foreclosure.

The mediation program goal is to assist homeowners avoid foreclosure by providing a formal process intended to foster negotiations between homeowners and mortgage companies.

The program is free! Homeowners are urged to read all notices and mail received from the Court offices, the state and their mortgage lender or servicer.

Where do I go? Who do I contact for help?

- Call the Attorney General's Foreclosure Hotline at 1-800-220-5424
- Call a HUD Approved Housing Counseling Agency

It is important to stay in contact with your mortgage lender or servicer whether or not you are participating in this mediation program. They may be able to provide you with additional resources and assistance. Be sure to contact them as soon as possible - it's never too late to call your lender!!!

The program was created through a partnership of organizations including Governor Jack Markell, the Superior Court of Delaware, The Delaware State Housing Authority (DSHA), Attorney General's Office, State Legislators including Representative John Kowalko, the Bank Commissioner's Office, County representatives, Community Legal Aid Society, Inc (CLASI), the Delaware Bankers Association and mortgage lenders, Delaware Volunteer Legal Services, Legal Services Corporation of Delaware, ACORN, attorneys, and HUD-certified housing counseling agencies.

Program Links:

- Read the full program regulations in the Superior Court's Administrative Directive Administrative Directive
- Mediation Program Notice (English)
- Mediation Program Notice (Spanish)
- View to print the Universal Intake Form in English
- View to print the Universal Intake Form in Spanish
- View to print the Foreclosure Intervention Counseling Client's Checklist in English
- View to print the Foreclosure Intervention Counseling Client's Checklist in Spanish
- View the press release announcing the creation of the program

Delaware Foreclosure Mediation Program

You are about to lose your home to foreclosure

Don't Wait!

Free help is available through the
Delaware Foreclosure Mediation Program*

Governor Jack Markell

To participate you must meet with a HUD-approved housing counseling agency, schedule an appointment and complete your application within 15 days or less from the date this notice was posted.

Where do I go? Who do I contact for help?

- **Delaware Attorney General's Foreclosure Hotline: 1-800-220-5424**
- **HUD-Approved Housing Counselor (see below)**
- **State of Delaware Foreclosure Website: www.DEForeclosureHelp.org**

HUD-APPROVED HOUSING COUNSELOR CONTACT INFORMATION

New Castle County:
HOND - **302-429-0794**
YWCA - **302-224-4060**
Hockessin Community Center - **302-239-2363**
Neighborhood House - **302-652-3928**
NCALL Research, Inc - **302-283-7505**
Interfaith Community Housing DE - **302-652-3991**
First State Community Action Agency - **302-498-0454**
West End Neighborhood House – **302-658-4171**

Kent County:
NCALL Research, Inc - **302-678-9400**
Interfaith Community Housing DE - **302-741-0142**
First State Community Action Agency - **302-674-1355**

Sussex County:
NCALL Research, Inc - **302-855-1370**
Interfaith Community Housing DE - **302-741-0142**
First State Community Action Agency - **302-856-7761**

It is also important to stay in contact with your mortgage lender or servicer. They may be able to provide you with additional resources and assistance. Be sure to contact them as soon as possible — it's never too late to call your lender!!!

***With the help of a housing counselor and a trained mediator you can meet directly with your lender to explore alternatives to foreclosure.**

TIME IS OF THE ESSENCE! CALL NOW!

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JAMES T. VAUGHN, JR.
PRESIDENT JUDGE

KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901

ADMINISTRATIVE DIRECTIVE OF THE PRESIDENT JUDGE OF THE SUPERIOR COURT OF THE STATE OF DELAWARE

NO. 2009-3

RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM

This 31st day of August 2009,

WHEREAS, the number of mortgage foreclosure complaints filed with the Court continues to grow at a pace that will reach more than six thousand in 2009. Historically, Delaware has averaged 2,000 foreclosure filings a year but had 4,500 filings in 2008. The increase in foreclosure filings is resulting in an increasing burden on judicial resources, de-stabilization of families and communities, and an adverse effect on property values and the interest of lenders in affected properties; and

WHEREAS, with the assistance of a trained mediator, lenders and homeowners may be able to negotiate a mutually acceptable alternative to the foreclosure action; and

WHEREAS, sound economic and public policy grounds support encouraging more lenders and homeowners to attempt to find mutually agreeable alternatives to foreclosure actions against individuals' primary residences; and

WHEREAS, mediation programs for foreclosure are being developed across

the country to address the residential mortgage foreclosure crisis; and

WHEREAS, the Court has previously acted to encourage parties to a mortgage foreclosure action to mutually agree to a resolution of the matter short of foreclosure in Administrative Directive No. 2008-3, through creation of the Mortgage Foreclosure Dormant Docket; and

WHEREAS, a steering committee comprised of attorneys for borrowers, attorneys for lenders, bankers, advocates, housing counselors, and other interested parties has been meeting for several months to develop a residential foreclosure mediation program for the Court and have reached a consensus on the design of a foreclosure mediation program;

NOW, THEREFORE, IT IS DIRECTED that:

1. A Residential Mortgage Foreclosure Mediation Program ("Mediation Program") is hereby adopted.

2. Upon the initiation of a foreclosure action against a homeowner occupied primary residence, Plaintiff or counsel for Plaintiff in complying with the requirement to notify persons with a possible real or equitable interest in the affected property (Superior Court Civil Rule Form 36) shall send and post a Special Notice Hotline Flyer, providing a hotline number (attached as Exhibit A in English and Spanish), a Universal Intake Form (attached as Exhibit B in English and Spanish), and a Foreclosure Intervention Counseling Client's Checklist (attached as Exhibit C in English and Spanish), to the Defendant homeowner (hereinafter "homeowner") as part of the Notice to Lienholders and Tenants as set forth in Superior Court Civil Rule

4(f)(4) and will certify that the flyer, intake form and checklist were posted and mailed, in the affidavit, mandated by that rule. The Flyer will advise the homeowner to seek counseling with one of the HUD certified counseling agencies by calling the hotline and getting a referral and will provide the homeowner with information pertaining to the Residential Mortgage Foreclosure Program including time lines for meeting with the counselor and providing the financial information necessary to complete the worksheet. The flyer will encourage the homeowner to stay in contact with Plaintiff. This residential foreclosure Mediation Program is limited to homeowners who own a one to four unit home and reside in the home as their primary residence or reside in one of the units of a one to four unit home as their primary residence and the mortgage on that property which is their primary residence is being foreclosed. In either case the mortgage being foreclosed on cannot have provided security, in whole or in part, for a business, commercial or agricultural loan.

3. A Homeowner may elect to enter the Mediation Program by meeting with a HUD certified housing counseling agency and submitting a completed version of the Universal Intake Form (Exhibit B) to the lender's attorney and Delaware Volunteer Legal Services ("DVLS") within 15 days of posting the flyer described in paragraph two above. However, Homeowners who have entered into a prior agreement through this Mediation Program with respect to the property in foreclosure and who have breached that agreement shall not be eligible to enter the Mediation program again absent the consent of the lender.

4. A Homeowner will qualify for the Mediation Program and the case will be

scheduled for mediation when (i) the requirements of paragraph three above have been fully satisfied and (ii) the Homeowner and counselor prepare a good faith proposal under which the Homeowner can reasonably sustain monthly mortgage payments (including taxes, principle, interest, insurance, homeowner association dues and other fees typically placed in escrow and normally paid as part of the monthly mortgage payment) that do not account for more than 38% of the homeowner's gross (pretax) monthly income. The 38% threshold shall not be reached by a loan repayment term in excess of 40 years, an interest rate of less than 2%, or a principal reduction. These are threshold requirements for qualification and not intended to limit any agreements the parties may reach at Mediation. If the Homeowner qualifies for the Mediation Program, the HUD certified housing counselor will provide the completed worksheet and pertinent documents to (i) Counsel of Record in the foreclosure action and (ii) DVLS to permit them to schedule the case for the next available mediation day in the County where the foreclosed property is located.

Homeowners who complete step one but cannot develop a good faith proposal that limits monthly payments to 38% of income, are encouraged to negotiate with the Plaintiff and counsel for Plaintiff shall have the discretion to ask that the case be scheduled for Mediation.

5. Upon receipt of the completed worksheet and attachments, Counsel of Record for the Plaintiff will *post haste* forward the completed worksheet with attachments to the Plaintiff. In the event that the Homeowner does not file a timely answer to the foreclosure action, Counsel for Plaintiff shall not seek a default

judgment until at least 60 days after Plaintiff has received the completed worksheet and attachments thereto. If Mediation does not occur within 60 days, through no fault of the Plaintiff, and an Answer with an Affidavit of Defense is not filed, Default Judgment may be requested without Motion in accordance with Superior Court Rule of Civil Procedure 55(b)(1). Even if Default Judgment does enter, Mediation can still occur and the Default Judgment can be vacated by stipulation of the parties if an agreement is reached or as otherwise allowed in Superior Court Rules of Civil Procedure.

6. If the Plaintiff and Homeowner (who has qualified for the Mediation Program) either do not enter into good faith negotiations designed to end the foreclosure action, or do enter such negotiations, but fail to reach a settlement, a mediation conference between the parties will take place as already scheduled on the next available Mediation Program mediation day in the County where the foreclosure action was commenced. A preliminary position statement will be provided by the parties to the Mediator one day in advance of mediation.

7. A representative of the Plaintiff, who has decision making/settlement authority, must attend the mediation session either in person or be available by phone.

8. Once scheduled, if both parties appear, a mediation conference may only be continued or rescheduled at the request of the Plaintiff or upon agreement of both parties. If Plaintiff fails to appear, the case will be rescheduled for the next available mediation day or such other time as the parties may agree. If mediation is being rescheduled because of Plaintiff's failure to appear, consideration will be given to

schedule mediation at a time(s) convenient of the Homeowner.

9. After mediation has concluded, the case may be resolved, placed on the dormant docket (Administrative Directive No. 2008-3) pending additional discussion between the parties, or if no settlement is reached, proceed pursuant to Court rules as if mediation had not been elected or pursued. If a workout is reached at mediation, the terms of the agreement will be memorialized in writing at the conclusion of the mediation. Promptly thereafter, the parties shall deliver to each other fully executed documents.

10. If seeking a default judgment against a mortgagor eligible to elect to participate in the Mediation Program, the Plaintiff or Plaintiff's counsel must have complied with the requirements in Paragraph two of this Directive.

11. Each mediator shall submit to the Court and to the Community Legal Aid Society, Inc. ("CLASI"), an ADR evaluation form which shall indicate, among other things, (i) whether the Homeowner and Plaintiff appeared, and (ii) whether a workout was reached.

12. CLASI shall maintain statistics on (i) the number of Mediation Program workouts that avoided losses of homes, (ii) the number of Mediation Program workouts that did not avoid losses of homes, (iii) the number of Mediations that did not result in a workout, (iv) the number of homeowners (counting joint homeowners on a single mortgage as one) who qualified for the Mediation Program, (v) the number of such homeowners who failed to appear at the scheduled Mediation and who had not earlier reached a workout agreement with the Plaintiff, (vi) the number

of workouts reached outside of the Mediation Program that avoided losses of homes, (vii) the number of workouts reached outside of the Mediation Program that did not avoid losses of homes, (viii) the number of Plaintiffs who failed to appear at the scheduled Mediation and who had not earlier reached a workout agreement with the Homeowner, and (ix) such other statistics as the Court deems appropriate to assess the Mediation Program and inform the public. These statistics shall be published quarterly by the Court. A steering committee consisting of stakeholders and representatives of stakeholders will meet, at the pleasure of the Court, to recommend improvements to the Mediation Program.

13. This Administrative Directive shall apply to all mortgage foreclosure actions within its scope filed on or after September 15, 2009.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotaries
cc: Superior Court Judges
Superior Court Commissioners
Court Administrator
Margaret Derrickson
File

EXHIBIT A

Delaware Foreclosure Mediation Program

You are about to lose your home to foreclosure

Don't Wait!

Free help is available through the
Delaware Foreclosure Mediation Program*

Governor Jack Markell

To participate you must meet with a HUD-approved housing counseling agency, schedule an appointment and complete your application within 15 days or less from the date this notice was posted.

Where do I go? Who do I contact for help?

- **Delaware Attorney General's Foreclosure Hotline: 1-800-220-5424**
- **HUD-Approved Housing Counselor (see below)**
- **State of Delaware Foreclosure Website: www.DEForeclosureHelp.org**

HUD-APPROVED HOUSING COUNSELOR CONTACT INFORMATION

New Castle County:
HOND - **302-429-0794**
YWCA - **302-224-4060**
Hockessin Community Center - **302-239-2363**
Neighborhood House - **302-652-3928**
NCALL Research, Inc - **302-283-7505**
Interfaith Community Housing DE - **302-652-3991**
First State Community Action Agency - **302-498-0454**
West End Neighborhood House – **302-658-4171**

Kent County:
NCALL Research, Inc - **302-678-9400**
Interfaith Community Housing DE - **302-741-0142**
First State Community Action Agency - **302-674-1355**

Sussex County:
NCALL Research, Inc - **302-855-1370**
Interfaith Community Housing DE - **302-741-0142**
First State Community Action Agency - **302-856-7761**

It is also important to stay in contact with your mortgage lender or servicer. They may be able to provide you with additional resources and assistance. Be sure to contact them as soon as possible — it's never too late to call your lender!!!

***With the help of a housing counselor and a trained mediator you can meet directly with your lender to explore alternatives to foreclosure.**

TIME IS OF THE ESSENCE! CALL NOW!

Programa de Mediación para Ejecución Hipotecaria en Delaware

Usted esta a punto de perder su casa por ejecución hipotecaria

NO ESPERE!

Ayuda Gratuita esta disponible a través del Programa de **Mediación para Ejecución Hipotecaria en Delaware***

Governor Jack Markell

Para participar usted debe reunirse con un asesor de vivienda aprobado por HUD, programar una cita y completar su aplicación dentro de los 15 días o menos de la fecha en que este anuncio fue publicado.

A donde voy? A quien contacto para ayuda?

- **Llame la Oficina del Fiscal General de Delaware, Para Asuntos de Ejecuciones de Hipotecas: 1-800-220-5424**
- **Asesor de Vivienda Aprobado por HUD**
- **Sitio de Internet del Estado de Delaware Ejecución Hipotecaria: www.DEForeclosureHelp.org**

INFORMACION DE CONTACTO CON UN ASESOR DE VIVIENDA APROBADO POR HUD

Condado de New Castle:
HOND - **302-429-0794**
YWCA - **302-224-4060**
Hockessin Community Center - **302-239-2363**
Neighborhood House - **302-652-3928**
NCALL Research, Inc - **302-283-7505**
Interfaith Community Housing DE - **302-652-3991**
First State Community Action Agency - **302-498-0454**
West End Neighborhood House – **302-658-4171**

Condado de Kent:
NCALL Research, Inc - **302-678-9400**
Interfaith Community Housing DE - **302-741-0142**
First State Community Action Agency - **302-674-1355**

Condado de Sussex :
NCALL Research, Inc - **302-855-1370**
Interfaith Community Housing DE - **302-741-0142**
First State Community Action Agency - **302-856-7761**

Es también muy importante que este en contacto con su prestamista hipotecario. Ellos pueden ofrecerle otros medios y asistencia adicional. Este seguro de contactarlos tan pronto sea posible – Nunca es demasiado tarde para llamar a su prestamista!!!

***Con la ayuda de un asesor de vivienda y un Mediador entrenado, usted puede reunirse directamente con su prestamista para buscar alternativas a la ejecución hipotecaria.**

TIEMPO ES CRUCIAL! LLAME AHORA!

EXHIBIT B

Universal Intake Form

PLEASE PRINT

How were you referred to us?_____ If previous client, Counselor's Name:_____

Borrower:

Name:_____
First M.I. Last

_____ _____ _____ _____
Social Security # Date of Birth Race Ethnicity (Hispanic/Non-Hispanic)

Address:_____
Street Address City State Zip

Home Phone:_____ Cell Phone:_____

Employer: _____ Annual Income: Gross $_____

Other Income? * Please identify source and amount._____

***Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.**

Work Phone:_____ Email Address:_____

Marital Status: Married Separated Unmarried (single, divorced, widowed) # of People in Household? _____

Co - Borrower:

Name:_____
First M.I. Last

_____
Social Security # Date of Birth Race Ethnicity (Hispanic/Non-Hispanic)

Address:_____
Street Address City State Zip

Home Phone:_____ Cell Phone:_____

Employer:_____ Annual Income: Gross $ _____ _____

Other Income?* Please identify source and amount._____

Work Phone:_____ Email Address:_____

Marital Status: Married Separated Unmarried (single, divorced, widowed)

***Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.**

Do You Want to Keep Your Home? _____ Are you currently living in the home? _____

Name of Original Mortgage Company: _____

Name of Current Mortgage Company:_____

Have You Contacted Your Lender/Servicer? Yes _____ No _____ If Yes, Last Contact Date: _____

Home Mortgage Loan Information:

Loan Number: _____ Current Value of Your Home: _____

Type of Mortgage: _____ FHA _____ VA _____ Conv. _____ ARM _____ 80/20 _____ 30 -Yr Fixed _____

Other Identify: _____

Monthly Mortgage Payment:_____ Term:_____ Interest Rate:_____

Date Last Mortgage Payment Made:_____ How Many Months Past Due Are You?_____

Have You Been Served Legal Papers?_____ Do You Have a Second Mortgage?_____

If Yes, With Whom?:_____

Ever Had a Loan Modification / Forbearance Agreement?_____ When?_____

Have You Filed Bankruptcy?_____ When?_____

Have You Ever Worked with Another Agency to Remedy Your Mortgage Default?_____

If Yes, Agency's Name:_____ Counselor:_____ Payments to Agency (if any): $_____

Universal Intake Form

Income & Asset Sources — Page 2

Monthly Income: Borrower:		Monthly Income: Co-Borrower	
Wages *(before taxes)*	$_____	Wages *(before taxes)*	$_____
Unemployment Income	$_____	Unemployment Income	$_____
Child Support/Alimony*	$_____	Child Support/Alimony*	$_____
SSI/SSDI	$_____	SSI/SSDI	$_____
Retirement/Pension	$_____	Retirement/Pension	$_____
Rents received	$_____	Rents received	$_____
Other	$_____	Other	$_____
Gross Monthly Income: $ _____		Gross Monthly Income: $ _____	
Net Monthly Income**: $ _____		Net Monthly Income**: $ _____	

***Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.**

**Gross income, less Federal/State/Local taxes, FICA, 401K deductions, etc.

Besides income sources, please circle additional resources available to pay towards defaulted mortgage:

401(k), 403(b), CDs, IRAs, Money Market, Family/Friends, Other Amount available: $ _____

	Monthly	Annual	Total Owed
Total Mortgage Payment			
(Principal & Int., Property Taxes, H/O Insurances, H/O Ass'n Dues)	$_____	$_____	
If not escrowed, Property Taxes	$_____	$_____	
If not escrowed, H/O Insurance	$_____	$_____	
If not escrowed, Homeowner Associations Dues -	$_____	$_____	
Auto Expenses (gas, maintenance, etc.)	$_____	$_____	
Auto Insurance:	$_____	$_____	
Credit Cards	$_____	$_____	
Child Care, Alimony, Child Support:	$_____	$_____	
Food (Groceries, Eating Out, Snacks):	$_____	$_____	
Utilities (gas, electric, water, sewer, and garbage)	$_____	$_____	
Communications (cell phone, telephone, internet)	$_____	$_____	
Miscellaneous Spending Money:	$_____	$_____	
Auto Loans: Year_____ Make & Model _____	$_____	$_____	$_____
Auto Loans: Year_____ Make & Model _____	$_____	$_____	$_____
Installment Loans:	$_____	$_____	$_____
Medical Expenses:	$_____	$_____	$_____
Student Loans:	$_____	$_____	$_____
Home Equity Loans, outstanding balances	$_____	$_____	$_____
TOTAL MONTHLY EXPENSES:	$_____		
MONTHLY SURPLUS/SHORTFALL (Total Monthly Income minus Total Monthly Expenses)			$_____

Universal Intake Form

1. I/we represent that I am/we are currently occupying the property securing the loan as my/our primary residence. If I am /we are currently occupying the property, I/we also represent that I/we intend to continue occupying the property as my/our primary residence.
2. Under penalty of perjury, I/we certify that all documents and information that I/we provide to the Housing Counselor and the Lender/Servicer, including the documents and information regarding my eligibility for any modification or eligibility for any Foreclosure Mediation Program, are true and correct and accurately reflect my financial status. My Lender/Servicer may discuss, obtain and share information about my mortgage and financial situation with third parties regarding a possible alternative to foreclosure.
3. I/we understand and acknowledge the Lender/Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate state and Federal law.
4. I/we understand that if I/we have intentionally engaged in fraud or misrepresented any fact(s), or if I/we do not provide all of the required documentation, the Lender/Servicer may refuse to consider any modification or alternative to foreclosure.
5. I/we certify that I am /we are willing to provide all requested documents and to respond to Housing Counselor/Mediator/Lender/Servicer communications in a timely manner. I/we understand that time is of the essence and intentional delays on my/our part could result in making me/us ineligible for the Foreclosure Mediation Program.
6. I/we understand that negotiations for a possible foreclosure alternative will not constitute a waiver or defense to my Lender's/Servicer's right to commence or continue any foreclosure or other collection action.
7. I/we understand that an alternative to foreclosure will only be provided if an agreement has been approved in writing by my Lender/Servicer.

Borrower	Date	Co-Borrower	Date

Forma Universal de Información

EN IMPRENTA POR FAVOR

¿Cómo fue referido a nosotros?_____ Si es nuestro cliente, Nombre del Consejero:_____

Prestatario:

Nombre:_____
Primero I.M Apellidos

_____ _____ _____ _____
Seguro Social Fecha de Nacimiento Raza Etnicidad (Hispano/No-Hispano)

Direccion:_____
Calles Ciudad Estado Zip

Teléfono (Domicilio):_____ Teléfono (Celular):_____

Empleador: _____ Salario Anual: Bruto $_____

¿Otras Ganancias? *Identifique por favor la fuente y la cantidad._____

***Estipendio por divorcio, manutención de hijos o algún ingreso por mantenimiento de separación no necesitan ser revelados si el prestatario o Co-prestatario decide no considerar estos ingresos para el pago de este préstamo.**

Teléfono (Trabajo):_____ E-mail:_____

Estatus Marital: Casado Separado No Casado (soltero, divorciado, viudo) ¿# de Personas en su Hogar? _____

Co - Prestatario:

Nombre:_____
Primero I.M Apellidos

_____ _____ _____ _____
Seguro Social Fecha de Nacimiento Raza Etnicidad (Hispano/No-Hispano)

Direccion:_____
Calles Ciudad Estado Zip

Teléfono (Domicilio):_____ Teléfono (Celular):_____

Empleador: _____ Salario Anual: Bruto $_____

¿Otras Ganancias? *Identifique por favor la fuente y la cantidad._____

***Estipendio por divorcio, manutención de hijos o algún ingreso por mantenimiento de separación no necesitan ser revelados si el prestatario o Co-prestatario decide no considerar estos ingresos para el pago de este préstamo.**

Teléfono (Trabajo):_____ E-mail:_____

¿Desea usted mantener su vivienda? _____ ¿Vive en su vivienda actualmente? _____

Nombre de la Compañía Hipotecaria Originaria: _____

Nombre de la Compañía Hipotecaria Actual:_____

¿Usted ha entrado en contacto con su prestamista/Servidor? Si_____ No _____ En caso Si, Fecha de último Contacto: ____

Información Hipotecaria del Préstamo:

Número del Préstamo: _____Valor Actual de su Vivienda: _____

Tipo de Hipoteca: _____ FHA _____ VA _____ Conv. _____ ARM _____ 80/20 _____ 30 -Anos Fijos _____

En caso de otra identifique: _____

Pago Mensual de su Hipoteca:_____ Termino:_____ Taza de Interés:_____

Fecha del último pago Hipotecario realizado:_____ ¿Cuantos meses atrasados, se encuentra?_____

¿Le han servido los papeles Legales?_____ ¿Tiene una Hipoteca Secundaria?_____ En caso Si, ¿Con Quién?_____

¿Alguna vez ha obtenido una Modificación del Préstamo/ Acuerdo de Abstención?_____ ¿Cuándo?_____

¿Ha aplicado a Bancarrota?_____ ¿Cuándo?_____

¿Alguna vez ha trabajado con alguna agencia para remediar su atraso de pago en la hipoteca?_____

En Caso Si, Nombre de la Agencia:_____ Consejero:_____ Pagos a la Agencia (Si es que hubo pagos): $_____

Forma Universal de Información

Ingresos & Fuente de Ganancias	Pagina 2
Ingreso Mensual: Prestamista:	Ingreso Mensual: Co-Prestamista
Salario *(antes de impuestos)* $_____	Salario *(antes de impuestos)* $_____
Ingreso por Desempleo $_____	Ingreso por Desempleo $_____
Manutención (Hijos)/Estipendio (divorcio)* $_____	Manutención (Hijos)/Estipendio (divorcio)* $_____
Ingreso Seguro Social /Discapacidad $_____	Ingreso Seguro Social /Discapacidad $_____
Retiro/Pension $_____	Retiro/Pension $_____
Ingresos por Rentas Recibidas $_____	Ingresos por Rentas Recibidas $_____
Otros Ingresos $_____	Otros Ingresos $_____
Ingresos Mensuales Brutos : $ _____	Ingresos Mensuales Brutos: $ _____
Ingresos Mensuales Netos**: $ _____	Ingresos Mensuales Netos *: $ _____

*** Estipendio por divorcio, manutención de hijos o algún ingreso por mantenimiento de separación no necesitan ser revelados si el prestatario o Co-prestatario decide no considerar estos ingresos para el pago de este préstamo.**

**Ingreso Bruto, menos Impuestos Federales/Estatales/Locales, FICA, Deducciones 401K, etc.

Además de sus Fuentes de Ingresos, por favor circule los recursos adicionales disponibles para pagar su deuda hipotecaria:

401(k), 403(b), CDs, IRAs, Money Market, Familia/Amigos, Otros Cantidad Disponible: $ _____

Deudas & Gastos: (TODOS LOS PRESTATARIOS)

	Mensual	Anual	Deuda Total
Pago Hipotecario Total (Principal & Int., Impuesto de Propiedad, Seguro, Pagos Asociación)	$_____	$_____	
Si no depositados, Impuestos por Propiedad	$_____	$_____	
Si no depositados, Seguro de Propietario de Vivienda	$_____	$_____	
Si no depositados, Pagos por Asociación -	$_____	$_____	
Gastos de Automóvil (gasolina, mantenimiento, etc.)	$_____	$_____	
Seguro de Automóvil:	$_____	$_____	
Tarjetas de Crédito	$_____	$_____	
Guardería, Estipendio, Manutención de Hijos:	$_____	$_____	
Comida (Comestibles, Restaurantes, Snacks):	$_____	$_____	
Utilidades (gas,electricidad,agua,alcantarillado,y basura)	$_____	$_____	
Comunicaciones (celular, teléfono, internet)	$_____	$_____	
Gastos Varios:	$_____	$_____	
Préstamo de Automóvil: Ano_____ Marca & Modelo _____	$_____	$_____	$_____
Préstamo de Automóvil: Ano_____ Marca & Modelo _____	$_____	$_____	$_____
Préstamo a Plazo:	$_____	$_____	$_____
Gastos Médicos:	$_____	$_____	$_____
Préstamo Estudiantil:	$_____	$_____	$_____
Préstamo de Equidad Propietaria, balance pendiente	$_____	$_____	$_____
TOTAL GASTOS MENSUALES:	$_____		

EXCEDENTE/DEFICIT MENSUAL (Total Ingresos Mensuales menos Total Gastos Mensuales) $_____

Forma Universal de Información

1. Yo/nosotros represento que Yo estoy/Nosotros estamos actualmente ocupando la propiedad asegurando el préstamo de mi/nuestra residencia primaria. Si Yo estoy/Nosotros estamos actualmente ocupando la propiedad, Yo/nosotros también representamos que Mi/nuestra intención es continuar ocupando la propiedad como mi/nuestra propiedad principal.
2. Bajo pena de perjurio, Yo/nosotros certificamos que todos los documentos e información que Yo/nosotros proporcionamos al consejero de vivienda y al prestamista/Servidor, incluyendo los documentos y la información con respecto mi elegibilidad para cualquier modificación o a la elegibilidad para cualquier programa de Intervención de la Ejecución de Vivienda, son verdaderos y correctos y reflejan exactamente mi estado financiero. Mi prestamista/Servidor puede discutir, obtener y compartir información de partes terceras sobre mi hipoteca y situación financiera con respecto a un alternativa posible a la Ejecución de Vivienda.
3. Yo/nosotros entendemos y reconocemos que el prestamista/Servidor pueden investigar la exactitud de las declaraciones mías/nuestras, pueden requerir que yo/nosotros proporcionemos la documentación de soporte, y con conocimiento de información falsa sometida puedo violar la ley del estado y la ley federal.
4. Yo/nosotros entendemos que en caso de que Yo/nosotros hayamos intencionalmente participado en fraude o falsificado cualquier hecho, o si Yo/nosotros no proporcionamos toda la documentación requerida, el prestamista/Servidor puede rechazar la consideración de cualquier modificación o alternativa a la Ejecución de un Vivienda.
5. Yo/nosotros certificamos que Yo/nosotros estamos dispuestos a proporcionar todos los documentos solicitados y a responder a las comunicaciones del consejero/del mediador/del prestamista/de Servidor de vivienda de una manera oportuna. Yo/nosotros entendemos que el tiempo es esencial y un retraso intencionalmente de mi/nuestra parte podría dar lugar a hacer me/nos inelegible para el programa de Intervención de Ejecución de Vivienda.
6. Yo/nosotros entendemos que las negociaciones para una alternativa posible de la Ejecución de Vivienda no constituirán en una renuncia o una defensa a los derechos mi Prestamista/Servidor de comenzar o de continuar la ejecución de vivienda u otra acción de colección.
7. Yo/nosotros entendemos que una alternativa a la ejecución de vivienda será proporcionada solamente si un acuerdo ha sido aprobado por escrito de parte de mi prestamista/Servidor.

_____ _____

Prestatario Fecha Co-Prestatario Fecha

EXHIBIT C

Foreclosure Intervention Counseling
Client's Checklist

To ensure that we are able to make the one-on-one counseling session effective and efficient, please be on time and bring all the items listed below.

Income, Savings and Investment Documentation

1. _____ Copy of your signed federal tax returns (including all schedules and attachments) for the last two (2) years
2. _____ Proof of income (last two (2) pay stubs, social security, disability, rental, government assistance, unemployment, year-to-date profit and loss statement if self-employed, other income *) – All paperwork must cover the most recent month.

   NOTE: * Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.

3. _____ Bank statements for last three (3) months), Retirement/investment statements for (401(k), 403(b), CDs, IRAs, etc.)
4. _____ Recent utility bill (electric, trash, gas, water, cable, phone) with your name and property address on it as proof of occupancy

Budget and Expenses

_____ Budget – Complete monthly household budget to include **all** expenses

Current Mortgage Documentation

1. _____ Loan Application
2. _____ Mortgage
3. _____ Note & Riders
4. _____ Truth In Lending Disclosure
5. _____ HUD-1 Settlement Statement
6. _____ Last Mortgage Statement Received
7. _____ If loan is non-escrowed
   a. Copy of the most recent property tax bill and proof of payment (if applicable)
   b. Copy of current insurance bill and proof of payment (if applicable)
8. _____ Legal Documents (attorney letters, foreclosure documents, sheriff sale notices, condemnation notice, etc.)
9. _____ Most recent late notice
10. _____ Correspondence with lender(s) (such as letter to lender)
11. _____ Previous Loan Modification Documentation (if applicable)

Purchase Offer Documentation (if you wish to sell the home subject to foreclosure and you currently have a purchase offer on the home, please bring the following):

Foreclosure Intervention Counseling
Client's Checklist

1. _____ Sales & Purchase Agreement (signed by buyer and you)
2. _____ Net Sheet or proposed Settlement Statement, showing itemized breakdown of all costs related to the sale transaction (i.e., agent commission and closing costs)
3. _____ Listing Agreement(s)
4. _____ Copy of buyer's deposit check
5. _____ Copy of buyer's loan approval letter.

The Housing Counselor will help you develop the following:

Hardship Letter (describes the hardship and circumstances that caused it; explains steps taken to correct the situation; provides your plan to get back on track and stay there; and assures the lender that you are a responsible homeowner who just needs a second chance and that you are very motivated to save your home)

Home Affordable Modification Program Hardship Affidavit (Fannie Mae Form 1021)

IRS Form 4506-T (Request for Transcript of Tax Return)

Housing Counselor Staff Only:

Date Close Out Documentation Completed _____ (Required for NFMC)

Guía de Documentos para Prevenir la Ejecución de Vivienda

Para asegurarnos que nuestra asesoría durante la cita sea eficaz, pronta y responsable por favor, llegue a tiempo y traiga todos los documentos que aparecen a continuación:

Ingresos, Ahorros y Documentación de inversiones

1. _____ Copias firmadas de sus declaraciones de impuestos federales (incluya todos las formas y archivos adjuntos) durante los últimos dos (2) años.
2. _____ Pruebas de ingresos (último dos (2) recibos de pago, beneficios de seguro social, beneficios por discapacidad, ingresos por alquiler, asistencia del Gobierno, desempleo, declaraciones de pérdidas y ganancias (año hasta la fecha) si trabaja por su propia cuenta, otros ingresos *) – Todos los documentos debe abarcar el más reciente mes.

   Nota: * Estipendio por divorcio, manutención de hijos o algún ingreso por mantenimiento de separación no necesitan ser revelados si el prestatario o Co-prestatario decide no considerar estos ingresos para el pago de este préstamo.

3. _____ Estados de Cuentas Bancarias los últimos tres (3) meses, declaraciones de jubilación/estado de inversiones del (401 (k), 403(b), CDs, IRAs, etc.
4. _____ Facturas recientes de utilidades (eléctrica, basura, gas, agua, cable, teléfono) con su nombre y dirección propietaria esto constara como prueba de que ocupa su vivienda.

Presupuestos y Gastos

_____ Presupuesto – Complete su presupuesto familiar mensual incluya **todos** los gastos.

Documentación Hipotecaria

1. _____ Aplicación del Préstamo.
2. _____ Hipoteca.
3. _____ Nota & Clausula.
4. _____ Declaración de veracidad del préstamo (TILA)
5. _____ HUD-1 Informe de la Operación de Cierre.
6. _____ Última declaración de hipoteca recibida.
7. _____ Si el préstamo no tiene fondos en garantía
   a. Copia de la factura de impuestos de propiedad más reciente y comprobante de pago (si corresponde)
   b. Copia actual del seguro y comprobante de pago (si corresponde)
8. _____ Documentos legales (cartas del abogado, documentos de ejecución/embargo de vivienda, avisos de venta de sheriff, aviso de condena, etc.)
9. _____ Aviso/carta mas reciente de pago atrasado.
10. _____ Correspondencia con prestamista(s) (Como cartas al prestamista)
11. _____ Documentación de modificación de préstamo anterior (si corresponde)

Guía de Documentos para Prevenir la Ejecución de Vivienda

Oferta de Compra (Si desea vender la vivienda sujeta a la ejecución/embargo y actualmente tiene una oferta de compra, por favor traiga lo siguiente):

1. _____ Acuerdo de venta y compra (firmado por el comprador y usted.
2. _____ Neto general o propuesta de liquidación, mostrando desglose detallado de todos costos relacionados con la transacción de venta (es decir, comisión del agente y los costos de cierre).
3. _____ Acuerdo(s) de Lista.
4. _____ Copia del cheque de depósito del comprador.
5. _____ Copia de la Carta de aprobación de préstamo del comprador.

El Consejero de vivienda le ayudará a desarrollar los siguientes:

Carta de Penuria (describa las dificultades y circunstancias que provocó su situación; explique medidas adoptadas para corregir la situación; presente su plan para volver a los pagos corrientes y mantenerse al día; y asegure al prestamista que es un propietario responsable que sólo necesita una segunda oportunidad y que está muy motivado para mantener su hogar)

Afidávit del Programa de Modificación de Vivienda Asequible (Fannie Mae Forma 1021)

Formulario de IRS 4506-T (Solicitud de transcripción de impuestos)

Uso exclusive del Consejero de Vivienda:

Fecha de Cierre/Documentación Completada_____ (Requerido por NFMC)

Delaware State Housing Authority
DSHA

Anas Ben Addi, Director

PRESS RELEASE

DATE FOR RELEASE:
EMBARGOED UNTIL 10 AM ON
Thursday, September 10, 2009

CONTACT: **Christina Hardin**
Chief of Community Relations
(302) 739-4263

STATE LAUNCHES NEW PROGRAM TO HELP HOMEOWNERS FACING FORECLOSURE

Governor Jack Markell joined President Judge James Vaughn, Jr. and members of the Mediation Program Steering Committee at New Castle County Courthouse to announce an Administrative Directive establishing the Residential Mortgage Foreclosure Mediation Program. The program provides a mechanism by which homeowners can elect to participate in a court mediation process - with their lender - to find mutually agreeable alternative to foreclosure action.

Governor Markell commented, "This program is the direct result of yet another great example of state agencies, legislators, attorneys, lenders, bankers, housing counselors, nonprofits, advocates, and other stakeholders coming together to find creative ways to help Delaware's families keep their homes. So many families facing foreclosure did everything right. They played by the rules, they worked hard, but fell victim to the national recession. Helping them stay in their homes is good for our economy and good for Delaware's families. Delaware is a state of neighbors. When we see a problem, we come together to solve it."

President Judge of the Superior Court, Judge Vaughn, remarked, "The residential mortgage foreclosure mediation program which has been adopted by the Court represents the work of both lenders and homeowners. With the assistance of housing counselors, the program gives homeowners an opportunity to negotiate an alternative to foreclosure, without affecting substantial rights of lenders."

Steering Committee Member and State Representative John Kowalko added, "This mediation program, crafted to offer hope and significant relief for an often overlooked yet most vulnerable segment of our society, could not have come to fruition without the dedication and persistence of a group of people who managed to compromise their diversity of self-interests and focus exclusively on their goal of helping those families most in need. This program, while not a panacea for the foreclosure crisis, will enable some families to salvage their hopes and dreams and continue to participate in the great American dream of home ownership and independence. I personally feel it was an honor and a privilege to work over the last nine months with such dedicated and compassionate community leaders whose singular goal was to help those who most needed help."

The Residential Mortgage Foreclosure Mediation Program gives homeowners that are behind on their mortgage payments an opportunity to meet with a U.S. Department of Housing and Urban Development (HUD)-certified housing counselor and request mediation with their lender under the guidance of Delaware Volunteer Legal Services. Homeowners will work with the housing counselor to prepare a good faith proposal under which they can reasonably sustain monthly mortgage payments, including taxes, interest, insurance and other fees. Providing the homeowner's proposal to the mortgage lenders and creating a connection between homeowner, housing counselor and lender before and during the mediation session will give all parties the best

chance to come to an agreement and avoid continuing the foreclosure process. This program is really about exchanging information and making connections to allow the best-case resolution to come to fruition.

Community Legal Aid Society, Inc. (CLASI) Executive Director Chris White said, "We are pleased that everyone came together, put their individual interests to one side and focused upon helping families losing their homes. We all recognized how important a home is to a family – especially the children and everyone worked tirelessly to develop a program that would help as many homeowners as possible. Our hope is now that as many people as possible will take advantage of this opportunity."

"Historically, Delaware has averaged about 2,000 foreclosure filings each year. That number more than doubled to 4,500 in 2008. This year, the pace continues to grow and filings in Delaware are projected to exceed 6,000. This mediation program will be the first state-wide comprehensive tool designed to keep families in their homes and thereby stabilize our state's economy." noted Delaware State Housing Authority Director Anas Ben Addi.

The idea for the program in Delaware came when advocates from ACORN urged state legislators and President Judge Vaughn to take action to help families facing foreclosure. ACORN and CLASI organized the first steering committee meeting in October of 2008.

Homeowners facing foreclosure should look for the program information included with the notice of the foreclosure filing and should promptly schedule an appointment with a housing counselor by either calling the counseling agency directly or call the Attorney General's Foreclosure Hotline at 800-220-5424 or visit www.DEForeclosureHelp.org. The notice of foreclosure will also include worksheets and a list of information the counselor will need to put together the good faith proposal. Homeowners should begin to collect their information and complete their worksheet as soon as they receive the notice.

For more information about programs available in Delaware to assist homeowners facing foreclosure, please visit www.DEForeclosureHelp.org, or call the Attorney General's Foreclosure Hotline at 800-220-5424.

# # # # # # #

CONTACT FOR MORE INFO:
Christina Hardin, Chief, Community Relations
Delaware State Housing Authority
18 The Green, Dover, DE 19901
302/739-4263
302/739-3178 (fax)

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FLORIDA

(9TH, 11TH, 19TH, 1ST, 18TH AND 12TH JUDICIAL DISTRICTS)

ADMINISTRATIVE ORDER
NO. 2009-02

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

ADMINISTRATIVE ORDER GOVERNING MANDATORY CIRCUIT COURT MEDIATION FOR OWNER-OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURES

WHEREAS, residential mortgage foreclosure cases have significantly increased in Orange County, Osceola County, and the entire State of Florida throughout 2008 and continuing into 2009; and

WHEREAS, the judges in the Orange County Circuit Civil Division are routinely advised by both banks and owner-occupant litigants that due to high volumes, communication has been difficult between representatives of the lender and homeowners; and

WHEREAS, in many cases the first opportunity for the owner-occupant litigants to discuss potential resolution short of judicial sale is at a hearing on the lender's motion for summary judgment; and

WHEREAS, the failure of the parties to communicate effectively in a timely fashion results in unnecessary waste of judicial resources and court staff time, all of which could be obviated in whole or in part by mediation; and

WHEREAS, Florida Rule of Civil Procedure 1.700(a) provides that the judge may enter an order referring all or any part of a contested civil matter to mediation; and

WHEREAS, loan modification and foreclosure relief plans available to homeowners are rapidly evolving due to changes in bank policies and state and federal regulations, of which foreclosure counsel may be unaware; and

WHEREAS, board certified mediator members of the Orange County Bar Association have agreed to provide mediation services at reduced fees to lessen the cost of mediation in

owner-occupied foreclosure cases; and

NOW, THEREFORE, I, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, order the following, effective immediately and to continue until further order:

1. The Court shall have the option of referring a case to mediation at anytime, including at the time of any hearing on motion for summary judgment. Plaintiff-Lenders are encouraged to engage in pre-suit mediation to avoid the continued burden on the Clerk of the Court and the judiciary.

2. Plaintiff-Lenders in foreclosure proceedings will be required to deliver at the time of service of process on Defendant-Debtor, a Notice to Homeowners of contact information including phone numbers and addresses to their loan workout department and notice of homeowners' right to mediation attached hereto as Exhibit "A." In addition, if the Lender has a debt relief or home loan loss mitigation program in effect, it shall provide the Debtor with information and access to the program including any 1-800 numbers.

3. If the Defendant-Debtor has requested mediation, Counsel for the Plaintiff shall coordinate and schedule the case for mediation within 45 days of the answer or paper served or filed by the Defendant making such request.

4. A list of Board Certified Civil Mediators who are willing to provide mediation services at significantly reduced rates will be maintained by the Orange County Bar Association at their website: www.ocbanet.org. If the parties cannot secure a certified mediator from that list, or elsewhere, the presiding judge shall be notified by Plaintiff's counsel and compliance with this Order shall be temporarily excused until such time as a mediator is appointed by the court. The Plaintiff shall make a reasonable effort to coordinate the mediation with all parties and

shall give the Defendant-Debtor and any non-defaulted inferior lien-holders reasonable advanced notice of the date, time, and place of the mediation.

5. Personal communication by the Plaintiff's counsel with the Defendant-Debtor is expected to occur within 30 days of answer to the Complaint. If counsel for the Plaintiff-Lender after diligent effort and personal communication with the Defendant-Debtor in person or by telephone, learns that the Defendant-Debtor does not have any ability or willingness to work with the Plaintiff-Lender and is unwilling to engage in any loss mitigation efforts, then the counsel for the Plaintiff-Lender may file a Notice of Good Faith Communication and may be excused from compliance with this Order. The Notice shall state:

The undersigned counsel for [Plaintiff/Lender] hereby certifies that he/she has personally communicated with [Defendant-Debtor] in connection with this residential foreclosure and the debtor has not demonstrated any willingness to work with the lender and in the opinion of counsel no useful purpose could be served by a mediation conference.

It is anticipated that the certification permitting the Plaintiff/Lender to forego compliance with mediation will be used sparingly and in light of the ever-evolving programs and forms of relief becoming available. Any attorneys who shall file certifications without personal communication, or who in bad faith engage in efforts to avoid compliance with this Order shall be sanctioned. Attorneys are expected to communicate in person or by telephone with the Defendant-Debtor and a certification may not be filed by an attorney based on communication between the attorney's staff or lender representatives and the debtor.

6. **The Mediation**: A representative of the Plaintiff-Lender with full authority to settle must participate in the mediation and attendance of the representative must be continuous throughout the mediation session. If the meditation representative for the Plaintiff-Lender is

more than 25 miles from the proposed location for the mediation or outside this Circuit, attendance by telephone shall be permitted. However, the Plaintiff's counsel should be present in person at the mediation session if the Plaintiff's representative is attending by telephone. Notice of attendance by telephone must be given to the Defendant-Debtor or Defendant's counsel and a toll free number should be provided for use by the mediator or the parties as needed. Plaintiff's counsel, the Defendant (and Defense counsel if any for non-defaulted parties) must appear at the mediation in person or seek an order of relief. If the Defendant fails to appear at a properly notice mediation without good cause, or if the matter impasses after mediation, the matter may be promptly noticed for final or summary judgment providing all of the requirements of the rules of procedure have otherwise been meet. If the Plaintiff fails to appear at mediation or if there is no representative with full settlement authority the action may be subject to dismissal or other sanctions may be imposed.

7. The Plaintiff-Lender shall provide a copy of this Order to the Defendant-Debtor and the Debtor is obligated to make good faith efforts to comply with reasonable requests for information concerning the Debtor's ability to pay, expenses, and income as a pre-requisite to mediation. By furnishing this information the Debtor may help the Lender identify potential programs or other means of assistance and potential workouts.

8. **Fees**: Initial costs of the mediation should be born by the Plaintiff-Lender at a rate of $275.00 for 2 hours of mediation. One half of the mediator's fee may be claimed as costs and included within a final judgment. Unless otherwise agreed to with the mediator, any fee charged by the mediator shall be paid by the Plaintiff or Plaintiff's counsel within 20 days from the date of the mediation. If mediation takes more than 2 hours, the fee to be applied shall be at a rate of $100.00 for each hour thereafter. If a Plaintiff fails to appear at mediation, if the mediation cannot go forward at the scheduled time due to the Plaintiff or Plaintiff's counsel, or if the

mediator is not notified 48 hours in advance that a mediation session has been cancelled or is unnecessary, then the mediator shall be entitled to a cancellation fee equal to 2 hours of mediation time payable by the Plaintiff.

DONE AND ORDERED at Orlando, Florida, this 25th day of February, 2009.

/s/
Belvin Perry, Jr.
Chief Judge

Copies to:
Clerk of Courts, Orange County
Clerk of Courts, Osceola County
General E-Mail Distribution List
http://www.ninthcircuit.org

Exhibit "A"

Notice to Homeowner
Lender Contact and Mediation Information

This Notice to Homeowner is required by Administrative Order of the Ninth Judicial Circuit Court for cases pending in Orange County. It is given to you at the time of service of process by the Plaintiff/ Lender, with the summons and complaint for foreclosure. The following contact information and phone numbers and addresses to their loan workout department is for your use. If the Lender has a debt relief or home loan loss mitigation program in effect, information and access to the program including any 1-800 numbers is provided below:

How to Contact your Lender (on the loan currently being foreclosed for non-payment):

Your Lender is:

You can call:

Right to Mediation

You may request that the court order mediation in your case before a final judgment or foreclosure sale of your property. You have been served with a complaint from your Lender, **TO WHICH YOU MUST FILE AN ANSWER WITHIN 20 DAYS**. That means send a copy of your answer to the complaint to the courthouse clerk's office and by mail to the other parties in the lawsuit. In that answer, or by separate pleading, you can request mediation. By requesting mediation you are not excused from filing an answer to the complaint being served on you. You must answer the complaint **WITHIN 20 DAYS** or you will be in default in the lawsuit.

Mediation is most appropriate where you have already tried to contact your Lender (or have been unable to) and still feel you have the financial ability to reinstate or modify your loan or come to some other mutually agreeable workout. In mediation, you will be required to meet with a representative of the Lender who has authority to discuss your loan and with a mediator who will try to facilitate a settlement. By electing to participate in this mediation program you are agreeing to bring your wage, bank account, credit card, and other financial information relating to your income and debts to the mediation and you are agreeing to disclose this information to the Lender. You may discuss: 1) reinstatement of the mortgage, 2) refinance, 3) sale of your home, or 4) foreclosure sale.

Additional information regarding mortgage foreclosures and landlord /tenant matters is available at the **Court Resource Center** , Room 365, 3rd Floor of the Orange County Courthouse located at 425 N. Orange Ave., Orlando, FL 32801. Information on how to find a lawyer is available from the Orange County Bar Association's **Lawyer Referral Service** by calling 407-422-4537.

THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 09-1
(Court Administration)

ADMINISTRATIVE ORDER
NO. 09-08

IN RE: ESTABLISHMENT OF 11TH CIRCUIT HOMESTEAD ACCESS TO MEDIATION PROGRAM ("CHAMP") FOR CASE MANAGEMENT OF RESIDENTIAL FORECLOSURE CASES IN THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

WHEREAS, pursuant to Article V, Section 2(d) of the Florida Constitution and Section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, Rule 2.215(b)(3), Florida Rules of Judicial Administration mandates that the chief judge "develop an administrative plan for the efficient and proper administration of all courts within the circuit"; and

WHEREAS, Rule 2.545, Florida Rules of Judicial Administration requires that the trial courts "...take charge of all cases at an early stage in the litigation and... control the progress of the case thereafter until the case is determined...", which includes "... identifying cases subject to alternative dispute resolution processes"; and

WHEREAS, Chapter 44, Florida Statutes, and Rules 1.700-1.750, Florida Rules of Civil Procedure, provide a framework for court-ordered mediation of contested civil actions, if the judge determines the action to be of such nature that mediation could be of benefit to the litigants or the court; and

WHEREAS, given the large volume of mortgage foreclosure actions filed in this Circuit, it has been determined that mandatory mediation of mortgage foreclosure actions involving homestead properties, prior to the matter being set for final hearing, will facilitate better communication between the parties, resulting in more effective case management and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

WHEREAS, the Collins Center for Public Policy is an independent, nonpartisan, nonprofit organization serving the people of the State of Florida, with the resources and expertise in managing voluminous mediation matters; and

WHEREAS, in an effort to expedite the implementation of mandatory mediation of mortgage foreclosure actions involving homestead properties, the Circuit and the Collins Center collaborated to develop a pilot program to be known as the 11th Circuit Homestead Access To Mediation Program ("CHAMP");

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida, under Rule 2.215 of the Florida Rules of Judicial Administration, it is hereby **ORDERED**:

1. **Establishment:** The 11th Circuit Homestead Access To Mediation Program ("CHAMP") for case management of residential foreclosure cases involving homestead properties in the Eleventh Judicial Circuit of Florida, in collaboration with the Collins Center for Public Policy, Inc., is hereby established.

2. **Mediation Referral:** This Administrative Order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure. By this Administrative Order, unless a stipulation is specifically invoked by the parties in writing within five (5) days of service of the complaint on the main defendant, the parties are deemed to have stipulated to referral of the mediation to the Collins Center pursuant to Rule 1.720(f), Fla. R. Civ. P. Referral to the Collins Center is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to participate in the CHAMP.

3. **Procedures and Requirements**: In all residential foreclosure actions involving homestead properties filed on or after May 1, 2009, to which this Administrative Order applies, if a notice for trial or motion for summary judgment is filed with the Clerk of the Courts, no action will be taken by the court to set a final hearing or enter a summary judgment until the following procedures are followed and requirements are met:

    a. At the time a complaint for foreclosure on a homestead property is filed by a Plaintiff/Lender, counsel for the Plaintiff/Lender must also electronically transmit a notice form to the Collins Center advising of such filing, providing the names and contact information for the parties, and a certification that the Lender's representative who will participate in the mediation has full authority to modify the terms of the note and mortgage and to settle the matter. (See Form A attached hereto)

b. At the time of filing of the complaint and transmission of Form A, Plaintiff/Lender shall forward a check, made payable to the Collins Center, in the amount of Seven Hundred Fifty Dollars ($750.00), to cover the administrative cost of the CHAMP ("Cost Check"). Should the Plaintiff/Lender fail to tender the Cost Check to the Collins Center within five (5) calendar days of the date of filing, the court will be so notified by the Collins Center, which may result in the court's dismissal of the complaint without prejudice.

c. Immediately upon receipt of the Cost Check, the Collins Center shall commence its efforts to contact the Defendant/Borrower to substantiate the foreclosure action and to advise of the availability of financial counseling and mediation. The Collins Center shall have thirty (30) days to make such contact. In the event the Collins Center is unable to contact the Defendant/Borrower within this prescribed timeframe, the Collins Center shall so advise the court and the Lender/Plaintiff, which may result in a final hearing being set or an entry of summary judgment by the court.

d. Thereafter, with the agreement of the Defendant/Borrower, the Collins Center will refer the Defendant/Borrower to a US Department of Housing and Urban Development ("HUD") and/or National Foreclosure Mitigation Counseling Program ("NFMC") agencies experienced in mortgage delinquency and default resolution counseling ("Counseling Agency"), to assist the Defendant/ Borrower on the telephone with the completion of financial documentation which shall immediately be made available electronically to the Lender for the purpose of renegotiating loan terms ("Financial Documentation"). The Counseling Agency shall have twenty-one (21) days from receiving a referral of a Defendant/Borrower from the Collins Center to contact the Defendant/Borrower, conduct the telephonic counseling session, complete the Financial Documentation, and make such Financial Documentation available electronically to the Plaintiff/Lender. The Counseling Agency shall use the Collins Center's website, www.collinsmediation.org to download forms for the Financial Documentation and to complete and store the Financial Documentation. The Plaintiff/Lender shall use the Collins Center's website, www.collinsmediation.org to retrieve the Financial Documentation if it wishes to review it prior to the mediation. The Counseling Agency and the Plaintiff/Lender and, if it so chooses, the Defendant/Borrower, shall register at the Collins Center's website and receive access codes from the Collins Center for confidential use of the website for these purposes. In addition to making the Financial Documentation available electronically by

cooperating with the Counseling Agency, the Defendant/Borrower, as advised by the Counseling Agency, shall bring to the mediation such supporting documentation, to verify information on the Financial Documentation, as is specified on the Financial Documentation form.

e. Upon notification from the Counseling Agency that its services have been rendered to the Defendant/Borrower and the Financial Documentation is complete and has been made available to the Plaintiff/Lender on the Collins Center website, the Collins Center will schedule and notice the mediation ("Mediation")

f. The Collins Center shall schedule such Mediations with those mediators who have been duly certified by the Florida Supreme Court as Circuit Civil Mediators and who have received additional training in foreclosure mediations provided by the Collins Center. All Mediators who meet the herein stated qualifications shall be eligible to provide mediation services for the CHAMP ("Foreclosure Mediators").

g. The Collins Center shall be responsible for paying the Foreclosure Mediators for their services, using Three Hundred and Fifty Dollars ($350.00) of the Cost Check for that purpose ("Mediator's Fee"). If the Mediation does not occur for one or more of the following reasons, the Collins Center shall refund the Mediator's Fee to the Plaintiff/Lender:

(i) The Mediation is cancelled sooner than five (5) business days prior to the scheduled date.

(ii) The Collins Center is unable to contact the Defendant/Borrower within the thirty (30) days required by Paragraph 2c of this Order and the Mediation is never scheduled.

(iii) The Defendant/Borrower, after being contacted, refuses for any reason to participate in the mediation and the Mediation is never scheduled.

(iv) Pursuant to Rule 1.720(f), Fla. R. Civ. P., within five (5) days of service of the complaint, the parties have agreed upon a stipulation with the court designating a certified mediator.

h. All parties named in the foreclosure action shall be noticed of the Mediation ("Mediation Notice") by the Collins Center, using information provided on Form A by the Plaintiff/Lender. Upon

being noticed:

(i) Plaintiff/Lender's counsel and the Defendant/Borrower **must** be physically present at the Mediation.

(ii) The Plaintiff/Lender's representative with full and complete authority to settle on behalf of the Lender is required to personally participate in the Mediation. Personal participation is deemed to be either physically present, present telephonically, or readily available by telephone.

(iii) Other interested parties who were noticed, may; but, are not required to personally participate in the Mediation.

i. If either the Plaintiff/Lender or representative with full and complete settlement authority designated in Form A or amended Form A, or the Defendant/Borrower fails to appear at a properly noticed Mediation, the Collins Center will report the non-appearance to the court.

j. Moreover, if the Plaintiff/Lender fails to timely tender the Cost Check as prescribed herein or if the Plaintiff/Lender or representative with full and complete settlement authority fails to appear, the Collins Center shall notify the court of such information and the court may dismiss the action without prejudice, order the Plaintiff/Lender to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorneys fees and costs if the Defendant/Borrower is represented by an attorney.

k. If the Defendant/Borrower fails to appear, or if the Mediation results in an impasse with all required parties present, the matter may proceed to a final hearing or summary judgment, in accordance with the rules of civil procedure without any further requirement to attend mediation.

l. Pursuant to Rule 1.730, Rules of Civil Procedure, within ten (10) days after the completion of the Mediation, the Foreclosure Mediator shall file a report to the court of the result of the Mediation as follows:

(i) If the parties do not reach an agreement as to any matter as a result of mediation, the Foreclosure Mediator shall report the lack of an agreement to the court without comment or recommendation.

(ii) If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court and/or a stipulation of dismissal shall be filed.

m. All mediation communications occurring as a result of this Administrative Order shall be confidential and inadmissible in any subsequent legal proceeding pursuant to the Florida Mediation Confidentiality and Privilege Act, Section 44.401-406, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law or by order of a court of competent jurisdiction. Accordingly, in conformance with Section 44.405(5), Florida Statutes, the Defendant/ Borrower's Financial Documentation **must** be provided to the Plaintiff's representative and any other party for whom Borrower gives authorization for disclosure in connection with the renegotiation of the loan documents under the CHAMP.

n. In the event of a breach or failure to perform under an agreement reached by the parties at the Mediation, the court may impose sanctions pursuant to Rule 1.730, Florida Rules of Civil Procedure.

o. Each CHAMP case, subject to the procedures and requirements as hereinabove set forth, shall commence and be completed within one hundred twenty (120) days.

4. **CHAMP Limitation:** Notwithstanding this Circuit's desire to reduce its number of mortgage foreclosure actions, the CHAMP shall only be available once per case for cases filed on or after May 1, 2009. However, mediation services will be available for mortgage foreclosure actions that predate May 1, 2009 that are still pending in the court, on a case by case basis, subject to the availability of Foreclosure Mediators, who will be selected from registry on a rotational basis, established in collaboration with the Collins Center, by the Eleventh Judicial Circuit.

This Administrative Order shall take effect on May 1, 2009 and will remain in full force and effect until further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this _____ day of April, 2009.

JOSEPH P. FARINA, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

***Please complete online at homeowner.CollinsMediation.org Form A use the password: "mediation123" and file original with the Clerk of Court*

FOR CLERK'S USE:	Case No:	
	Mediation For Plaintiff	Yes No

IN THE 11TH CIRCUIT COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

☐ Original Form A ☐ Amended Form A

Form "A"

Certificate of Plaintiff's Regarding Status of Residential Property

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, pursuant to 11th Judicial Circuit Administrative Order _____, certifies as follows:

The property _____ IS or _____ IS NOT an owner-occupied residence. An "owner-occupied residence" means a residential property owned by one of the defendant(s) and occupied by one of the defendant(s) or an immediate family member of one of the defendant(s), including spouse, children, parents, grandparents or siblings.

If the residential property is an owner-occupied residence, complete the following:

Certificate of Plaintiff Regarding Representative at Mediation

Please print clearly or type.

Plaintiff		Defendant(s)	
Company:		Name:	
Contact Person:		Case Number:	
Telephone:		Telephone:	
Fax:		Fax:	
Email:		Email:	
Property Location			
Address:		County:	City:
		State:	Zip:
Additional Information:			

Lender Representative with Full Authority to Settle			
Name:		Address:	
Telephone:		City:	
Email:		State:	
FAX:		Zip:	
The representative's relationship to the plaintiff is:			

The individual named above will represent the plaintiff at mediation. This individual has full authority to modify the existing loan and mortgage and to settle the foreclosure case. The plaintiff understands the Collins Center may report to the court who appears at mediation and if the representative with full settlement authority named above does not appear at mediation, sanctions may be imposed by the court for failure to appear. The undersigned has personally spoken with the designated representative who confirmed that he or she will have full and complete modification and settlement authority at mediation. The plaintiff understands that the court may order sanctions for any false certification or failure to comply with the court's Order.

If the property is an owner-occupied residence, in addition to Form A, the plaintiff must file with the complaint a copy of the promissory note and mortgage for the property and any pooling or servicing agreements with investors in the property that may affect the plaintiff's ability to settle and to resolve the foreclosure suit and bring a copy of those documents to the mediation.

Signature:					
Printed Name:					
Address:		Email:		Phone:	
Email:		Fax:		Date:	

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR INDIAN RIVER, MARTIN, OKEECHOBEE AND ST. LUCIE COUNTIES, STATE OF FLORIDA

ADMINISTRATIVE ORDER NUMBER 2009 –01

RE: ADMINISTRATIVE ORDER FOR CASE MANAGEMENT OF RESIDENTIAL FORECLOSURE CASES AND MANDATORY REFERRAL OF MORTGAGE FORECLOSURE CASES INVOLVING OWNER-OCCUPIED RESIDENCES TO MEDIATION

Whereas, pursuant to Article V, Section 2(d) of the Florida Constitution and Section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and Rule 2.215(b)(3), Fla. R. Jud. Admin., mandates the chief judge to "develop an administrative plan for the efficient and proper administration of all courts within [the] circuit;" and

Whereas, Rule 2.545 of the Rules of Judicial Administration requires that the trial courts "...take charge of all cases at an early stage in the litigation and...control the progress of the case thereafter until the case is determined...", which includes "...identifying cases subject to alternative dispute resolution processes;" and

Whereas, Chapter 44, Florida Statutes, and Rules 1.700-1.750, Florida Rules of Civil Procedure, provide a framework for court-ordered mediation of contested civil actions, except those matters expressly excluded by Rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

Whereas, residential mortgage foreclosure case filings have increased substantially in the Nineteenth Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the Nineteenth Judicial Circuit to manage these cases in a timely manner; and

Whereas, high residential mortgage foreclosure rates are damaging the economies of the counties in the Nineteenth Judicial Circuit; and

Whereas, high residential mortgage foreclosure rates place an increased strain on the citizens and families in the Nineteenth Judicial Circuit who have lost

jobs or who are otherwise suffering from the current downturn in the nation's economy. "A family who loses its home to foreclosure not only loses a stable place to live, but risks permanently ruining its credit and faces substantial barriers to buying a home in the future." See, Report of the Joint Economic Committee of Congress, "Sheltering Neighborhoods From The Subprime Foreclosure Storm," June 22, 2007; and

Whereas, the Joint Economic Committee of Congress' report estimates that the total average cost of a foreclosure to the homeowner ($7,000), lender ($50,000), local government ($19,000), and neighboring home values ($75,000) is $151,000.00. By contrast, the report states that preventing the foreclosure would cost $3,300.00 per home, on average; and

Whereas, residential foreclosure actions filed in Florida's courts are equitable in nature and should provide all parties full, fair and equitable opportunities for self determination of the outcome, and to be heard on all issues rather than to have them dealt with in an adjudicatory and summary manner in a court proceeding when the parties generally are not in an equal bargaining position; and

Whereas, judges in the Nineteenth Judicial Circuit have determined that mandatory mediation of residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring the cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

Whereas, the Collins Center for Public Policy is an independent, nonpartisan, nonprofit organization serving the people of the State of Florida and has demonstrable ability including resources and expertise to assist the courts with managing the huge influx of residential mortgage foreclosure actions that recently have been filed in the Nineteenth Judicial Circuit.

NOW, THEREFORE, IT IS ORDERED:

Scope

1. Upon the effective date of this Administrative Order, all newly filed mortgage foreclosure actions in the Nineteenth Judicial Circuit involving residential property shall comply with the certification requirement of paragraph 4 below as to whether the property is an owner-occupied residence as defined in this paragraph. All newly filed mortgage foreclosure actions involving an owner-occupied residence shall be referred for mediation in the program managed by the Collins Center.

   An "owner-occupied residence" means a residential property owned by one of the defendant(s) (hereafter referred to as "owner defendant") and occupied by one of the owner defendant(s) or an immediate family member of an owner defendant. An "immediate family member" means a spouse, child, parent, grandparent or sibling.

   Compliance with this administrative order may also be required for residential mortgage foreclosure cases filed prior to the effective date of this order at the discretion of the presiding judge if there are sufficient resources provided by the Collins Center to manage such cases.

2. This Order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure in cases involving a mortgage foreclosure of an owner-occupied residence. Unless a stipulation between the plaintiff and the owner defendant(s) is filed within 5 days of service of the complaint on the owner defendant(s), the parties are deemed to have stipulated to referral of the mediation to the Collins Center pursuant to rule 1.720(f), Fla. R. Civ. P. Referral to the Collins Center is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the panel of available certified circuit civil mediators.

3. The parties must comply with this administrative order and the mediation process must be completed before a default or summary final judgment is entered or a final hearing set in an action to foreclose a mortgage on an owner-occupied residence.

Procedure

4. At the time a complaint for foreclosure on a residential property is filed, counsel for the plaintiff must also file a completed Form A (see attached) with the Clerk of Court. If the property is an owner-occupied residence, both certifications in Form A must be filled out completely. Within one business day after the complaint is filed with the Clerk of Court, counsel for plaintiff shall also electronically transmit a copy of Form A to the Collins Center. (The Collins Center website is http://www.CollinsMediation.org.) If the residential property is an owner-occupied residence as defined above, the plaintiff must also file with the complaint a copy of the promissory note and mortgage and any pooling or servicing agreements (PSA) with investors in the property that may affect the plaintiff's ability to settle and to resolve the foreclosure suit. In addition, a copy of the note, mortgage and PSA must be brought to the mediation session by the plaintiff or plaintiff's counsel.

   In Form A Plaintiff's counsel must affirmatively certify whether the property is an owner-occupied residence as defined above. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar nonresponsive statements. If the property is an owner-occupied residence, plaintiff's counsel shall further certify the identity of the plaintiff or plaintiff's representative that has full and complete authority to settle and to resolve the foreclosure suit and that plaintiff's counsel has personally spoken to the representative and confirmed that the representative has full and complete settlement authority.

   If the plaintiff certifies that the property is NOT an owner-occupied residence, after the defendant(s) have been lawfully served with a copy of the complaint and the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation.

   If the plaintiff certifies that the property is an owner-occupied residence, the Clerk shall electronically transmit Form A to the Collins Center no later than 10 days after the complaint is filed and the matter shall be processed for mediation in accordance with this Order. If there are any changes to the information provided initially in Form A, the plaintiff, if *pro se*, or counsel for the plaintiff, must file an amended Form A with the Clerk and transmit a

copy of the amended Form A to the Collins Center before commencement of the mediation.

If the plaintiff certifies that the property is an owner-occupied residence, the clerk shall attach to the summons for the defendant(s) information advising the defendant(s) of the existence of the mediation program.

At the time of filing a foreclosure action involving an owner-occupied residence, the plaintiff, in addition to paying the Clerk's filing fee, must pay to the Clerk the managed mediation fee as provided in paragraph 9 of this Order. The managed mediation fee and the filing fee for the foreclosure action **shall not** be combined in one check payable to the Clerk. The check for the mediation fee shall be payable to the Clerk of Court and not the Collins Center. The Clerk shall electronically transfer to the Collins Center the managed mediation fees due to the Collins Center, less the Clerk's portion of the fee, on a monthly basis, no later than the 20th day of each month. The Clerk's portion of the mediation fee for collecting and transmitting the mediation fee and for transmitting Form A to the Collins Center is $10.00.

5. Within 10 days after the date the Clerk electronically transmits a copy of Form A to the Collins Center, the Collins Center shall schedule a mediation session. The mediation shall be conducted within a reasonable period of time thereafter with primary attention given to scheduling the mediation at a time and place convenient to the defendant(s) and using a mediator from the panel of Florida Supreme Court certified circuit civil mediators who have been specially trained to mediate residential mortgage foreclosure disputes. Mediation sessions will be held at suitable location(s) within the circuit obtained by the Collins Center for mediation.

6. All parties named in the foreclosure action shall attend the scheduled mediation in person or by a representative with full and complete authority to settle on behalf of themselves or their principals.

Unless stipulated in writing and signed by the parties or changed by order of the presiding judge, a party is deemed to appear at a mediation proceeding if the following persons are physically present:

(A) any individual party;
(B) the party's counsel of record, if any;

(C) a representative(s) of the plaintiff who has been certified as having full and complete authority to settle.

The representative with full an d complete settlement authority attending mediation may consult on the telephone during the mediation with other representatives of the plaintiff if needed to reach a settlement.

7. At the time the mediation is scheduled, the Collins Center shall send to the owner defendant(s) a list of US Department of Housing and Urban Development (HUD) and/or National Foreclosure Mitigation Counseling Program (NFMC) agencies experienced in mortgage delinquency and default resolution counseling, with contact information, that can assist the owner defendant(s) to prepare for the mediation session.

   (A) The counseling agency the owner defendant(s) uses may request the owner defendant(s) to meet in person with a representative to assist in the preparation of the financial affidavit provided by the court or the Collins Center and to gather and prepare any other documents the Collins Center requests or deems necessary to advance the mediation process. The owner defendant(s) shall certify in the financial affidavit that the owner defendant(s) or an immediate family member of the owner defendant(s), including a spouse, child, parent, grandparent or sibling is residing at the property. In addition, a representative of the counseling service may accompany the owner defendant(s) to the mediation session to serve as a resource for the owner defendant(s) during the mediation process.

   (B) The owner defendant(s), if not represented by an attorney, may apply for a volunteer *pro bono* attorney in programs run by lawyer referral, legal services and legal aid programs as may exist within the circuit. If the owner defendant(s) applies to one of the agencies and is coupled with a legal services attorney or a volunteer *pro bono* attorney, the attorney shall file a notice of appearance with the Clerk of the Court and provide a copy to the attorney for the plaintiff and the Collins Center. The appearance may be limited to representation only through to the conclusion of the mediation process.

8. If either the plaintiff, representative with full and complete settlement authority designated in Form A or amended Form A, or any of the owner

defendant(s) fails to appear at a properly noticed mediation, and the mediation results in an impasse, the report of the mediator shall notify the presiding judge of who appeared at mediation without making further comment as to the reasons for an impasse. If one of the owner defendant(s) fails to appear, or if the mediation results in an impasse with all required parties present, and if the owner defendant(s) have been lawfully served with a copy of the complaint, and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation. If the plaintiff or representative with full and complete settlement authority fails to appear, the court may dismiss the action without prejudice, order the plaintiff to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorneys fees and costs if the owner defendant is represented by an attorney.

9. Pursuant to Rule 1.720(g), Fla. R. Civ. P., the reasonable fee for the managed mediation is $750.00, which shall be paid by the plaintiff at the time the complaint is filed and is nonrefundable. The fee includes the mediator's fees and costs; a portion of the cost for the owner defendant(s) to attend a consumer credit counseling session with an approved consumer credit counseling agency representative, if they choose to do so; and, the cost to the Collins Center for administration of the managed mediation program, which includes but is not limited to, providing neutral meeting and caucus space, scheduling, telephone lines and instruments and other related expenses incurred in managing the foreclosure mediation program. If the case is not resolved through the mediation process, the presiding judge may tax the mediation fee as a cost or apply it as a set off in the final judgment of foreclosure.

10. Pursuant to Rule 1.730, within 10 days after completion of the mediation, the mediator or the Collins Center on behalf of the mediator, shall file a report to the court of the result of the mediation. The court shall be advised whether the parties have reached a mediated settlement agreement or the mediation resulted in an impasse. In the case of an impasse, the report shall advise the court who attended the mediation, and a copy of Form A or any amended Form A shall be attached to the report for the court to determine if the plaintiff representative named in Form A appeared for mediation.

11. In the event of a breach or failure to perform under an agreement reached by the parties at the mediation, the court may impose sanctions pursuant to Rule 1.730, Fla. R. Civ. P.

12. In all residential foreclosure actions to which this administrative order applies, if a notice for trial, motion for default final judgment or motion for summary judgment is filed with the Clerk, no action will be taken by the court to set a final hearing or enter a summary or default final judgment until the requirements of this administrative order have been met. The presiding judge may require that copies of the Form A (including any amendments) and the report of the mediator be sent to the presiding judge by the plaintiff or plaintiff's counsel prior to setting a final hearing or delivered with the packet requesting a summary or default final judgment.

13. All mediation communications occurring as a result of this administrative order shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law or by order of a court of competent jurisdiction.

14. Mortgage lenders, whether private individuals, commercial institutions, or mortgage servicing companies, are encouraged to use any form of alternative dispute resolution, including mediation, before filing a mortgage foreclosure lawsuit with the Clerk of the Court. Lenders are encouraged to enter into the mediation process with their borrowers prior to filing foreclosure actions in the Nineteenth Judicial Circuit to reduce the costs to the parties for maintaining the litigation and to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such cases being filed across the state and, in particular, in the Nineteenth Judicial Circuit.

15. The failure of a party to fully comply with the provisions of this order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.

This Administrative Order shall be recorded by the Clerk of the Court in each county of the Nineteenth Judicial Circuit, and takes effect on March 13, 2009, and will remain in full force and effect unless and until otherwise ordered.

DONE AND ORDERED on February 20, 2009.

WILLIAM L. ROBY
Chief Judge

IN THE FIRST CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR THE COUNTIES OF ESCAMBIA, SANTA ROSA, OKALOOSA AND WALTON

ADMINISTRATIVE ORDER NUMBER 2009 –18

IN RE: MEDIATION
CASE MANAGEMENT ORDER AND MANDATORY REFERRAL OF RESIDENTIAL MORTGAGE FORECLOSURE CASES TO MEDIATION

WHEREAS, pursuant to Article V, Section 2(d) of the Florida Constitution and Section 43.26, *Florida Statutes*, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and Rule 2.215(b)(3), *Fla. R. Jud. Admin.*, mandates the chief judge to "develop an administrative plan for the efficient and proper administration of all courts within the circuit;" and

WHEREAS, Rule 2.545 of the *Rules of Judicial Administration* requires that the trial courts "...take charge of all cases at an early stage in the litigation and ... control the progress of the case thereafter until the case is determined...", which includes "... identifying cases subject to alternative dispute resolution processes;" and

WHEREAS, Chapter 44, *Florida Statutes*, and Rules 1.700-1.750, *Florida Rules of Civil Procedure*, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by Rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

WHEREAS, residential mortgage foreclosure case filings have increased substantially in the First Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the First Judicial Circuit to manage these cases in a timely manner; and

WHEREAS, high residential mortgage foreclosure rates are damaging the economies of the counties in the First Judicial Circuit; and

WHEREAS, high residential mortgage foreclosure rates place an increased strain on the citizens and families in the First Judicial Circuit who have lost jobs or who are otherwise suffering from the current downturn in the nation's economy. "A family which loses its home to foreclosure not only loses a stable place to live, but risks permanently ruining its credit and faces substantial barriers to buying a home in the future." See, Report of the Joint Economic Committee of Congress, "Sheltering Neighborhoods from the Subprime Foreclosure Storm," June 22, 2007; and

WHEREAS, the Joint Economic Committee of Congress; report estimates that the total average cost of a foreclosure to the homeowner ($7,000), lender ($50,000), local government ($19,000), and neighboring home values ($75,000) is $151,000.00. By contrast, the report states that preventing the foreclosure would cost $3,300.00 per home, on average; and

WHEREAS, residential foreclosure actions filed in Florida's courts are equitable in nature and should provide all parties full, fair and equitable opportunities for self determination of the outcome, and to be heard on all issues rather than to have them dealt with in an adjudicatory and summary manner in a court proceeding when the parties generally are not in an equal bargaining position; and

WHEREAS, the Chief Judge of the First Judicial Circuit has determined that mandatory mediation of residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring the cases to mediation will also facilitate and provide a more efficient use of limited judicial resources in a court system that is already overburdened; and

WHEREAS, the Collins Center for Public Policy is an independent, nonpartisan, nonprofit organization serving the people of the State of Florida and has demonstrable ability including resources and expertise to assist the courts with managing the huge influx of residential mortgage foreclosure actions that recently have been filed in the First Judicial Circuit.

IT IS, THEREFORE, ORDERED THAT:

SCOPE:

1. Upon the expiration of fifteen days from the date of this Administrative Order (said later date hereinafter referred to as the "implementation date") all mortgage foreclosure actions filed by institutional, investment or commercial lenders (not individuals) in each county of the First Judicial Circuit involving residential property shall comply with the certification requirement of paragraph 4 below as to whether the property is an owner-occupied residence as defined below. All mortgage foreclosure actions involving an owner-occupied residence shall be referred for mediation to the program managed by the Collins Center for Public Policy.

   An "owner-occupied residence" means a primary residential dwelling (not a second home, rental home or vacation home) owned by one of the defendant(s) and occupied by one of the defendant(s) or an immediate family member of one of the defendant(s), including, but not limited to: spouse, children, parents, grandparents or siblings.

   At the discretion of the presiding judge (with or without motion by any party), compliance with this administrative order may also be required for residential mortgage foreclosure cases filed prior to the "implementation date" as herein above defined provided that sufficient resources are available through the Collins Center to manage such cases.

2. This Order constitutes a formal referral to mediation pursuant to the *Florida Rules of Civil Procedure* in cases involving the mortgage foreclosure of an owner-occupied residence. Unless, by stipulation in writing filed with the Clerk of Court within (5) working days of service of process, the plaintiff and "owner-occupant" defendant have agreed to the use of an alternate mediator the parties and the presiding judge are deemed to have stipulated to referral of the mediation to the Collins Center pursuant to Rule 1.720(f), *Fla. R. Civ. P.* Referral to the Collins Center is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the

panel of available certified circuit civil mediators. Such mediators are deemed assigned by the Court and are entitled to all privileges and immunities available to mediators under the law.

3. The mediation process must be completed and the results transmitted to the presiding judge as required by the *Florida Rules of Civil Procedure* before a default or summary final judgment is entered or a final hearing is set in an action to foreclose a mortgage on an owner-occupied residence.

4. Until such time as alternative site arrangements can be made all mediations for each county of this circuit shall occur at the Collins Center mediation center in Pensacola located at 236 West Garden Street.

PROCEDURE:

5. At the time a complaint for foreclosure on an "owner-occupied" residential property is filed, counsel for plaintiff must file with the complaint a completed "Form A" (attached hereto). Further within one business day after the complaint is filed with the Clerk of Court counsel for plaintiff shall electronically transmit a copy of "Form A" to the Collins Center at the email address or fax number provided at the Collins Center's website (http://www.CollinsMediation.org). The plaintiff must also file with the complaint a copy of the promissory note and mortgage for the property and any pooling or servicing agreements ("PSA") with investors maintaining an interest in the property that may affect the plaintiff's ability to mediate and completely settle the foreclosure actions. A copy of the note, mortgage and "PSA" must also be brought to the mediation session by the plaintiff or plaintiff's counsel.

   In "Form A" plaintiff's counsel must affirmatively certify whether the property is an "owner-occupied residence" as defined above. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar non-responsive statements. If the property is certified as an "owner-occupied" residence, plaintiff's counsel shall further certify the identity of plaintiff's representative that has full and complete authority to mediate and settle the action. Further, the venue and court case number must appear on "Form A" (This is absolutely critical).

If the plaintiff certifies that the property is not an "owner-occupied" residence at filing and the time for a responsive pleading has passed, the matter may be brought to final judgment in accordance with the *Florida Rules of Civil Procedure* and without any requirement to attend mediation.

At the time of filing a foreclosure action involving an owner-occupied residence, the plaintiff, in addition to paying the Clerk's filing fee shall (concurrent with the transmission of "Form A") pay direct to the Collins Center the managed mediation fee as provided in paragraph 10 of this Order. The check shall be made payable to the Collins Center and shall contain the venue of the court and the case number (this is absolutely critical) and shall be sent by regular U.S. Mail to the: Collins Center, ATTN: CFO, 150 S.E. 2nd Ave., Suite 709, Miami, FL 33131.

6. Within five (5) days of the date plaintiff's counsel transmits "Form A" to the Collins Center, counsel for the plaintiff shall contact the Collins Center and all defendants (except the owner-occupant) to coordinate potential scheduling dates for mediation. Once scheduled, notice of mediation shall be sent to all parties by plaintiff's counsel. Mediation shall be conducted within a reasonable time with particular consideration given to the availability of the owner-occupant. Mediation sessions shall be held at suitable locations secured by the Collins Center which locations are to be used solely for the purpose of foreclosure mediation.

7. Unless prior arrangements have been made with the Collins Center all parties shall attend the scheduled mediation in person with full and complete authority to settle on behalf of themselves or their principals. If there are any changes to the information provided initially in "Form A," counsel for the plaintiff, must electronically transmit an "amended Form A" to the Collins Center before commencement of the mediation. Unless stipulated in writing and signed by the parties or changed by order of the presiding judge, the following participants/parties are deemed to have appeared "in person" at a mediation proceeding if physically present or immediately available by telephone:

    (a) Any individual party.

(b) A party's counsel of record, if any.
(c) A representative of the plaintiff who has been certified as having full and complete authority to settle all issues.

The representative with full settlement authority attending mediation may consult on the telephone during the mediation with other representatives of the plaintiff if needed to reach a settlement.

8. Once the time for mediation is scheduled, the Collins Center shall send to the owner-occupant a list of contact information for agencies which are experienced in the areas of mortgage delinquency and default resolution counseling, specifically: the U.S. Department of Housing and Urban Development (HUD) and/or the National Foreclosure Mitigation Counseling Program (NFMC). These lists and/or the contact information provided are intended to assist the defendant(s) in preparation for the mediation session.

The counseling agency the owner-occupant uses may request that he/she meet in person with a representative to assist in the preparation of the financial affidavit provided by the Collins Center and to also gather and prepare and other documents the Collins Center requests or deems necessary for advancement of the mediation process. The owner-occupant shall certify in the financial affidavit that he/she or an immediate family member, including but not limited to a spouse, child, parent, grandparent or sibling is residing at the property. In addition, a representative of the counseling service may accompany the owner-occupant to the mediation session to serve as a resource for the defendant during the mediation process.

9. Any owner-occupant not represented by an attorney, will be given by the Collins Center a list of all agencies which may be in a position to advise or undertake representation. If representation is obtained, the attorney shall file a notice of appearance with the Clerk of the Court and provide a copy to the attorney for the plaintiff and the Collins Center. The appearance may be limited to representation only through the conclusion of the mediation process.

10. If the plaintiff's representative with full and complete settlement authority

designated in "Form A" or "amended Form A" fails to appear or if any non-owner occupant defendant fails to appear at a properly noticed mediation, the Collins Center shall notify the presiding judge of who appeared and failed to appear at mediation without making further comment. If the owner-occupant(s) fails to appear or if the mediation results in an impasse and if the owner-occupant(s) has been lawfully served with a copy of the complaint and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the *Florida Civil Rules of Procedure* without any further requirement to attend mediation. Either the presiding judge or any other judge designated by the presiding judge or chief judge may enter final judgment of foreclosure. If the plaintiff or representative with full and complete settlement authority fails to appear, the presiding judge may dismiss the action without prejudice, order the plaintiff the appear at mediation or impose such other sanctions as it may deem appropriate including, but not limited to, attorney fees and costs if the owner-occupant is represented by an attorney.

If a non-owner occupant defendant fails to appear at mediation the court may impose such sanctions as it deems appropriate, including, but not limited to, attorney fees and costs if the owner-occupant is represented by counsel.

11. Pursuant to Rule 1.720(g), *Fla. R. Civ. P.*, the reasonable fee for each managed mediation is determined by the Court to be $750.00, which shall be non-refundable and paid directly to the Collins Center by the plaintiff concurrent with the electronic transmission of "Form A." The fee shall be used for:

    (a) The mediator's fee.
    (b) A portion of the cost for the owner-occupant to attend a consumer credit counseling session with an approved consumer credit counseling agency representative, if they choose to do so.
    (c) Costs associated with the ongoing administration of the managed mediation program, including, but not limited to, providing neutral meeting and caucus space, scheduling, telephone lines and instruments and other related expenses

incurred in managing the mediation program.

If the case is not resolved through the mediation process, the presiding judge or other designated judge may tax the mediation fee as a cost or apply it as a set off in the final judgment of foreclosure.

12. Pursuant to Rule 1.370, *Fla.R.Civ.P.*, within (10) days after completion of mediation, the mediator or the Collins Center on behalf of the mediator, shall notify the Court in writing of the result of the mediation and file the original notification with the Clerk of Court. The Court shall be advised only that the parties have reached a mediated settlement agreement or that the mediation resulted in an impasse. In the case of an impasse, the notification shall advise the Court who attended mediation, and a copy of "Form A" or any "amended Form A" shall be attached to the notice for the Court to determine if the plaintiff representative named in "Form A" appeared for mediation. The notice shall also advise the Court if the mediation fee was paid prior to mediation.

13. In the event of a breach or failure to perform under an agreement reached by the parties at the mediation, the Court may impose sanctions pursuant to Rule 1.730, *Fla.R.Civ.P.*

14. In all foreclosure actions to which this administrative order applies, counsel for plaintiff may not file a notice for trial, default final judgment or motion for summary judgment until filing with the Clerk a certificate of compliance with this administrative order.

15. All mediation communications occurring as a result of this referral order shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, *Florida Statutes*, the *Florida Rules of Civil Procedure*, and the *Florida Rules for Certified and Court-Appointed Mediators* unless otherwise provided for by law and by order of court.

16. This Administrative Order only applies to actions that are filed in the counties of the First Judicial Circuit. However, mortgage lenders, whether private, commercial, institutional, or mortgage servicing companies, are encouraged to seek assistance, including mediation, before filing a mortgage

foreclosure lawsuit with the Clerk of the Court. Lenders are encouraged to contact the Collins Center to arrange for entry into a pre-suit mediation process with their borrowers prior to filing foreclosure actions in the First Judicial Circuit to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such cases being filed across the state and, in particular, in the First Judicial Circuit. In the event of pre-suit mediation impasse, the Collins Center shall provide a "Notice of Impasse" to the potential plaintiff who upon filing of that Notice with the Complaint for Foreclosure shall be excused from further compliance with the terms of this administrative order.

17. The failure of a party to fully comply with the provisions of this order may result in the imposition of any sanctions available to the Court, including dismissal of the cause of action.

This Administrative Order shall become effective upon execution, with implementation fifteen days thereafter and shall remain in full force and effect unless and until otherwise ordered.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 17th day of March, 2009.

KIM A. SKIEVASKI, Chief Judge
First Judicial Circuit of Florida

Copies furnished to:

All Judges, First Judicial Circuit
All Clerks, First Judicial Circuit
The Summation, Escambia/Santa Rosa Bar Association
Okaloosa/Walton Bar Association

Please complete this form online at http://www.CollinsMediation.org/Form A

IN THE CIRCUIT COURT IN AND FOR _____ COUNTY, FLORIDA

CASE NO. _____

Form "A"

Certificate of Plaintiff's Regarding Status of Residential Property

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court pursuant to 1st Judicial Circuit Administrative Order 2009-_____ certifies as follows:

The property ____IS or _____IS NOT an owner-occupied residence. An "owner-occupied residence" means a residential property owned by one of the defendant(s) and occupied by one of the defendant(s) or an immediate family member of one of the defendant(s), including spouse, children, parents, grandparents or siblings.

If the residential property is an owner-occupied residence, complete the following:

Certificate of Plaintiff Regarding Representative at Mediation

*Please print clearly or type

Plaintiff		Defendant(s)	
Company:		Name:	
Contact Person:		Case Number:	
Telephone:		Telephone:	
Fax:		Fax:	
Email:		Email:	

Property Location					
Address:		County:		City:	
		State:		Zip:	

Lender Representative with Full Authority to Settle			
Name:		Address:	
Telephone:		City:	
Email:		State:	
Fax:		Zip:	
The representative's relationship to the plaintiff is:			

The individual named above will represent the plaintiff in mediation. This individual has full authority to modify the existing loan and mortgage and to settle the foreclosure case. The plaintiff understands the Collins Center may report to the court who appears at mediation and if the representative with full settlement authority named above does not appear at mediation, sanctions may be imposed by the court for failure to appear. The undersigned has personally spoken with the designated representative who confirmed that he or she will have full and complete modification and settlement authority at mediation. The plaintiff understands that the court may order sanctions for any false certification or failure to comply with the court's Order.

If the property is an owner-occupied residence, in addition to Form A, the plaintiff must file with the complaint a copy of the promissory note and mortgage for the property and any pooling or servicing agreements with investors in the property that may affect the plaintiff's ability to settle and to resolve the foreclosure suit and bring a copy of those documents to the mediation

Signature:					
Printed Name:					
Address:		Bar #:		Phone:	
Email		Fax:		Date:	

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO: 09-14-B AMENDED
SUPERSEDES 09-14-B

IN RE: MEDIATION - MANDATORY MEDIATION CIRCUIT COURT BREVARD COUNTY OWNER OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURE

WHEREAS: Residential mortgage foreclosure case filings have substantially increased in Brevard County; and,

WHEREAS: High owner occupied residential foreclosure rates are having a damaging impact on the economy of Brevard County, the State of Florida, and the financial community; and,

WHEREAS: Owner Occupied Residential foreclosures place increased strain on family relationships, leading to higher divorce rates, increased incidents of domestic violence, and adverse impacts on children; and,

WHEREAS: The Judges in the Brevard County Circuit Civil Divisions are routinely advised by litigants that it is difficult, if not outright impossible, to negotiate settlements due to the inability to communicate with appropriate representatives of the lender or the lender's attorneys after the complaint for foreclosure has been filed. In many of these cases, the first opportunity the parties have to discuss the issues and attempt to resolve their differences is at a hearing on the lender's motion for summary judgment, or later at the foreclosure sale. By that time in most cases, all judicial labor has been expended and the costs and attorney's fees have increased significantly. The failure of the parties to communicate in a timely fashion results in unnecessary waste of resources by the court, the court staff, and the clerk's office, and could be obviated by pre-judgment mediation; and,

WHEREAS: Florida Rule of Civil Procedure 1.700(a) provides that a presiding judge may enter an order referring all or any part of a contested civil matter to mediation or arbitration; and

WHEREAS: Foreclosure actions are equitable in nature, the law abhors a forfeiture, and the nature of an owner occupied residential foreclosure mandates that the court give full, fair and equitable consideration to all issues in these cases rather than deal with them in a summary fashion; and,

WHEREAS: The seven presiding Brevard Circuit Civil Division judges have determined that greater economy of limited judicial and clerk resources would occur if contested owner occupied residential foreclosure cases in Brevard County were required to undergo mediation before being set for final hearing;

NOW, THEREFORE, IT IS ORDERED:

1. For all owner occupied residential mortgage foreclosure actions filed in Brevard County, Florida, after the date of this order and in which responsive pleadings or other filings seeking any form of relief by any owner occupant are filed, this order shall constitute an order of referral to mediation. Counsel for plaintiff shall coordinate and schedule the case for mediation prior to scheduling the matter for final or summary judgment hearing. The plaintiff may schedule mediation with any Supreme Court Certified Civil Mediator or may schedule mediation through the Brevard Civil Mediation Department for discounted mediation services with a member of the courts fixed fee panel. All scheduling information, procedures, forms and orders, using Brevard County's fixed fee panel can be found on the Brevard County website: www.flcourts18.org.
2. The fee for mediations scheduled through the mediation department shall be $250, paid in advance, for a 1½-hour session. All mediation fees shall be borne in advance by the plaintiff. If the matter does not resolve at mediation, the mediation fee may be taxed by the court as a cost of litigation in the final judgment of foreclosure.
3. The plaintiff shall make a reasonable effort to coordinate the mediation with all parties and shall give the defendant homeowner(s) and any undefaulted inferior lien holders reasonable advance notice of the date, time, and place of the mediation. When plaintiff gives notice of the mediation, plaintiff shall also give written notice, using the form attached as Addendum "A" hereto, identifying the lender's representative and attesting to the

representative's authority to participate in mediation and settle on behalf of the lender. Mediation may only be waived after hearing on a verified motion filed by the plaintiff asserting that all defendants have been defaulted. Upon filing said motion, Counsel for the plaintiff shall also certify that there has been no communication with any of the defendant(s) or any representative for any of the defendant(s) and that the foreclosure is truly uncontested.

4. A copy of the mediation agenda attached as Addendum "B" to this order shall be served upon the lender representative and homeowner and any undefaulted lien holders along with the notice of the mediation conference.

5. Nothing in this Order is intended to prevent the plaintiff from filing all pleadings necessary to proceed to final or summary judgment; however, hearing on a motion for summary judgment may not be scheduled prior to the conclusion of the scheduled mediation session or waiver of mediation as permitted under paragraph 3 above.

6. A representative of plaintiff with full authority to settle must participate in the mediation. The representative may attend the mediation by telephone, provided notice of such attendance is included in the mediation notice and a toll-free number is provided by plaintiff's counsel. If the representative attends by telephone, his/her attendance must be continuous throughout the mediation session. Plaintiff's counsel, Defendant(s), and defendant's counsel must appear at the mediation in person.

   Plaintiff's counsel must file with the court a certificate in substantially the same form as that attached hereto as Addendum "A," identifying the lender's representative, describing that representative's position or relationship with the lender, and specifically certifying that the representative has full authority to resolve the foreclosure suit without the need to seek other authorization.

7. If defendant(s) fail to appear at a properly noticed mediation or if the matter impasses after mediation, the matter may be promptly noticed for summary judgment, provided all requirements of F.R.C.P. 1.510 have been met. If plaintiff fails to appear for mediation or no representative with full settlement authority appears, the action shall be dismissed without prejudice.

8. Lenders are encouraged to enter into pre-suit mediation to expedite the process which may result in the filing of fewer foreclosure actions.

DONE AND ORDERED this 25th day of February, 2009.

CLAYTON D. SIMMONS
CLAYTON D. SIMMONS
CHIEF JUDGE

Distribution:
All Circuit and County Judges (Brevard County)
Court Administration (Brevard County)
Clerk of Court (Brevard County)
State Attorney (Brevard County)
Public Defender (Brevard County)
Sheriff (Brevard County)
Bar Association (Brevard County)
Law Library (Brevard County)
County Attorney (Brevard County)
BREVARD DTD 3-4-09 OR BOOK 5916 PAGES 6391 TO 6397
SEMINOLE DTD 3-11-09 OR BOOK 07149 PAGES 0274 TO 0280

ADDENDUM "A"

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR Brevard COUNTY, FLORIDA

(Name of Lender),

Plaintiff,

vs.

CASE NO: _____

Name of Judge to Whom case is assigned. (essential that this be placed in the style)

(Name of Defendant(s)),

Defendants.
_____/

CERTIFICATION OF SETTLEMENT AUTHORITY

THE UNDERSIGNED COUNSEL, as counsel of record in this cause and as an officer of the court, pursuant to the Administrative Order of the Chief Judge of the Eighteenth Judicial Circuit, does hereby certify as follows:

1. Mediation has been scheduled in this cause as ordered.

2. The plaintiff/lender will be represented by

_____

☐ by personal appearance.

☐ by telephone at _____(toll free phone #)

3. The plaintiff's representative's relationship to the plaintiff/lender is:

_____

4. The undersigned has personally spoken with the above designated representative and said representative has confirmed that the person has fully settlement authority.

Signature: _____
Printed Name: _____
Bar Number: _____
Address: _____
_____
_____
Tel. No. _____

ADDENDUM "B"

OWNER OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION AGENDA

The mediation conference shall include for consideration at least one of the following options:

A. Short term financial problems:

1. **Repayment plan:**

Description: This option involves a formal, written agreement between the homeowner, law firm, and lender which is reduced to a stipulation and, in some cases, a consent judgment. The agreement provides for temporary increase in monthly payments until the loan is brought current and may involve a cash down payment on the arrearage.

Benefit: The homeowner is given the opportunity to "make up" missed payments, rather than paying them all at once, and is allowed to remain in the home.

Detriment: Payments are higher than normal for the homeowner and may be unaffordable.

2. **Home Saver Advance:** (Fannie Mae insured loans only.)

Description: The lender agrees to advance funds to allow the homeowner to reinstate the mortgage. The homeowner signs a note at 5% interest payable over 15 years with no payments for the first six months for the amount advanced.

Benefit: The mortgage is brought current. Monthly payments are usually small and spread over a long period of time.

Detriment: Payments are larger than normal after the first six months.

3. **Forbearance:**

Description: A formal, written agreement between the homeowner, law firm, and the lender, often including a written stipulation and consent judgment.

Benefit: Under the agreement, monthly payments are reduced or suspended for a specified period of time. During that time, the homeowner either pays a lower monthly payment or no payment at all. At the end of the period, regular payments resume. The homeowner remains in the home.

Detriment: This option may not be affordable if the lender insists on a large lump sum payment.

B. Longer-term, more severe financial problems:

Modification:

Description: One or more of the terms of the note and mortgage may be changed to bring the loan current; for example, extending the term of the note or reducing the interest rate, temporarily or permanently. Alternatively, delinquent interest, escrow, taxes, and other costs could be added to the principal balance that is owed.

Benefit: The homeowner receives a fresh start and the loan remains a performing asset.

Detriment: Modifications take time to be reviewed by the various investors or mortgage insurance companies and the reductions may not be affordable.

C. **Pre-foreclosure sale:**

Description: The parties agree to sell the property at current fair market value, even if the proceeds will not cover the debt. The lender and homeowner agree to accept the proceeds of the sale in satisfaction of the debt or the lender agrees to accept a low interest note for the balance.

Benefit: The homeowner is relieved from the debt and avoids the stigma of foreclosure, and the lender is not required to take title to the property.

Detriment: Lender is not satisfied in full for the mortgage and note obligation.

D. **Deed in lieu of foreclosure:**

Description: The homeowner voluntarily deeds the property to the lender. This is generally a last choice option. The lender receives a consent judgment and waives any deficiency. This option is not available in some cases where there are junior mortgages or liens. The property must be vacated at the time of the deed transfer.

Benefit: The homeowner is relieved of the debt and the uncertainty of a sheriff's sale. May be beneficial for homeowner's future credit rating.

Detriment: Title issues can arise. Lender gains very little benefit other than taking title to the property.

E. **Consent judgment to vacate:**

Description: The homeowner agrees to vacate the property on a date certain and stipulates to a judgment of possession in any necessary eviction action.

Benefit: The homeowner retains possession of the property for the agreed period to allow the homeowner to solve school, day care, or commuting concerns.

Detriment: Lender suffers additional cost if homeowner fails to vacate. Lender may not be willing to agree to this option without a significant deposit to cover costs of eviction.

F. **Reverse mortgage:**

Description: Homeowner must be 62 years of age or older. Amount of reverse mortgage may be up to 60% of the value of the home. Reverse mortgage is used to pay off existing mortgage. There must be substantial equity in the property.

Benefit: Homeowner remains in possession.

Detriment: Homeowner may ultimately lose the property.

G. **Other:**

The parties may explore any other option or combination of options based upon the circumstances of the situation.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO: 09-09-S AMENDED
SUPERSEDES 09-09-S

IN RE: MEDIATION - MANDATORY MEDIATION CIRCUIT COURT SEMINOLE COUNTY OWNER-OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURES

WHEREAS: Residential mortgage foreclosure case filings have increased over 200% in Seminole County in the first half of 2008; and,

WHEREAS: Due to State and County budget cuts, the 18th Judicial Circuit has lost the services of the foreclosure case manager who was responsible for coordinating the scheduling of foreclosure case hearings in Seminole County; and,

WHEREAS: High residential foreclosure rates are having a damaging impact on the economy of Seminole County, the State of Florida, and the financial community; and,

WHEREAS: Owner-occupied residential foreclosures place increased strain on family relationships, leading to higher divorce rates, increased incidents of domestic violence, and adverse impacts on children; and,

WHEREAS: The Judges in the Seminole County Circuit Civil Divisions are routinely advised by owner-occupant litigants that it is difficult, if not outright impossible, to negotiate settlements due to the inability to communicate with appropriate representatives of the lender or the lender's attorneys after the complaint for foreclosure has been filed. In many of these cases, the first opportunity the owner/occupant litigants have to discuss the issues and attempt to resolve their differences is at a hearing on the lender's motion for summary judgment, or later at the foreclosure sale. By that time in most cases, all judicial labor has been expended and the costs and

attorney's fees have increased significantly. The failure of the parties to communicate in a timely fashion results in unnecessary waste of resources by the court, the court staff, and the clerk's office and could be obviated by pre-judgment mediation; and,

WHEREAS: Florida Rule of Civil Procedure 1.700(a) provides that a presiding judge may enter an order referring all or any part of a contested civil matter to mediation or arbitration; and

WHEREAS: Foreclosure actions are equitable in nature, the law abhors a forfeiture, and the nature of a owner-occupied residential foreclosure mandates that the court give full, fair, and equitable consideration to all issues in these cases rather than deal with them in a summary fashion; and,

WHEREAS: The four presiding Seminole Circuit Civil Division judges have determined that greater economy of limited judicial and clerk resources would occur if contested homeowner-occupied residential foreclosure cases in Seminole County were required to be scheduled for mediation before being set for final hearing;

NOW, THEREFORE, IT IS ORDERED:

1. For all homeowner-occupied residential mortgage foreclosure actions filed in Seminole County, Florida, and in which responsive pleadings or other filings asserting viable defenses or seeking any form of affirmative relief are filed by a homeowner Defendant, this order shall constitute an order of referral to mediation. Counsel for plaintiff shall coordinate and schedule the case for mediation prior to the date the matter is set for final or summary judgment hearing. Counsel shall follow the procedure set out in Seminole County Local Rule of Civil Procedure 08-20-S-01 located on the 18th Judicial Circuit website (flcourts18.org). The plaintiff may schedule mediation with any Supreme Court Certified Civil Mediator or may schedule mediation through the Seminole County Court mediation department for discounted mediation services with a member of the courts' fixed-fee panel. The mediation department can be reached at 407-665-4244 to schedule a mediation hearing with a fixed-fee panel member.
2. The fee for mediations scheduled through the mediation department shall be $250.00, paid in advance, for a 1½-hour session. All mediation fees shall be paid in advance by the plaintiff. If the matter does not resolve at mediation, the mediation fee may be taxed by the court as a cost of litigation in the final judgment of foreclosure.

3. The plaintiff shall make a reasonable effort to coordinate the mediation with all parties and shall give the defendant homeowner(s) and any un-defaulted inferior lien holders reasonable advance notice of the date, time, and place of the mediation. When plaintiff gives notice of the mediation, plaintiff shall also give written notice, using the form found in the local rules on the 18th Judicial Circuit website, identifying the lender's representative and attesting to the representative's authority to participate in mediation and settle on behalf of the lender. Mediation may only be waived on a verified motion filed by the plaintiff asserting that all defendants have been defaulted and no filing raising viable defenses or seeking affirmative relief has been made by a homeowner defendant. Plaintiff shall attach to its motion for waiver of mediation a copy of all documents filed by Defendant. Upon filing said motion, Counsel for the plaintiff shall also certify that there has been no communication with any of the defendant(s) or any representative for any of the defendant(s) and that the foreclosure is truly uncontested.

4. A copy of the mediation agenda found in the local forms set out on the 18th Judicial Circuit website shall be served upon the lender representative, the homeowner(s), and any un-defaulted inferior lien holders along with the notice of the mediation conference.

5. Nothing in this Order is intended to prevent the plaintiff from filing all pleadings necessary to proceed to final or summary judgment and scheduling a hearing on a motion for summary judgment, so long as the hearing is set to occur after the conclusion of the scheduled mediation session or mediation has been waived as permitted under paragraph 3 above.

6. A representative of plaintiff with full authority to settle must participate in the mediation. The representative may attend the mediation by telephone, provided notice of such attendance is included in the mediation notice and a toll-free number is provided by plaintiff's counsel. If the representative attends by telephone, his/her attendance must be continuous throughout the mediation session. Plaintiff's counsel, defendant(s), and defendant's counsel must appear at the mediation in person. Plaintiff's counsel must file with the court a certificate in the form set out in the local rules found on the 18th Judicial Circuit

website, identifying the lender's representative, describing that representative's position or relationship with the lender, and specifically certifying that the representative has full authority to resolve the foreclosure suit without the need to seek other authorization.

7. If defendant(s) fail to appear at a properly noticed mediation or if the matter impasses after mediation, the matter may be promptly noticed for final or summary judgment, provided all requirements of F.R.C.P. 1.510 have been met. If plaintiff fails to appear for mediation or no representative with full settlement authority appears, the action shall be dismissed without prejudice.

8. Lenders are encouraged to enter into pre-suit mediation to expedite the process and hopefully result in fewer foreclosures being filed.

DONE AND ORDERED this 30th day of September, 2009.

J. PRESTON SILVERNAIL

J. PRESTON SILVERNAIL
CHIEF JUDGE

Distribution:
All Circuit and County Judges (Seminole County)
Court Administration (Seminole County)
Clerk of Court (Seminole County)
State Attorney (Seminole County)
Public Defender (Seminole County)
Sheriff (Seminole County)
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County Attorney (Seminole County)

IN THE TWELFTH JUDICIAL CIRCUIT COURT FOR DESOTO, MANATEE AND SARASOTA COUNTIES, FLORIDA

ADMINISTRATIVE ORDER 2008-14.1

ADMINISTRATIVE ORDER ESTABLISHING STANDARD PROCEDURES FOR RESIDENTIAL AND COMMERCIAL MORTGAGE FORECLOSURE ACTIONS

WHEREAS, the Twelfth Judicial Circuit is experiencing an unprecedented number of mortgage foreclosures and the influx of these cases is straining the capacity of the courts to manage them efficiently; and

WHEREAS, reductions in judicial branch funding in the State of Florida have resulted in the elimination of support and administrative staff in the circuit, making the review of documentation submitted in connection with foreclosure summary judgments problematic; and

WHEREAS, standardized procedures are required to facilitate efficient processing of foreclosure cases and verification that cases are ripe for final disposition; and

WHEREAS, the court no longer has the personnel to undertake foreclosure file reviews or to confirm the accuracy of summary judgment hearing packets submitted by the parties; and

WHEREAS, judges in the Twelfth Circuit have had persistent difficulties communicating with parties filing foreclosure actions or their attorneys regarding logistical and efficiency issues, and this frustrates the orderly disposition of cases resulting in unnecessary delay and docket congestion; and

WHEREAS, standard procedures for the electronic filing of papers, pleadings and uniform checklists are necessary to assist the Court and Clerk in the processing of large numbers of documents submitted in connection with actions to foreclose mortgages;

NOW, THEREFORE, it is **ORDERED** that the following procedures shall be in force in the Twelfth Judicial Circuit on or after **December 1, 2008**:

This Administrative Order regulates local procedures governing the filing of actions to foreclose residential and commercial mortgages on real property located within the boundaries of the Twelfth Judicial Circuit. Consequently, this Order does not apply to actions to foreclose other interests in real property such as homeowner association liens, condominium or cooperative association liens, mechanic liens, tax or equitable liens.

I. Procedures Applicable to Foreclosure Actions in All Counties On or After 12/1/08

The following procedures are applicable to all parties filing residential or commercial mortgage foreclosure actions in Manatee, Sarasota, and Desoto Counties on or after December 1, 2008. The transition rules set forth in Section IV of this Administrative Order explain whether a case pending as of 12/1/08 is subject to the new local rules or the prior procedures.

A. Standard Form Final Judgment Required

The circuit has adopted a standard foreclosure Final Judgment. This form shall be used in all cases by parties seeking to foreclose mortgages. A copy of this form and all forms referenced in this Administrative Order are available on the circuit's website: **www.jud12.flcourts.org**

B. Use of JACS to Schedule Hearings in Foreclosure Cases

The Twelfth Circuit has implemented a **Judicial Automated Calendaring System (JACS)**. Information concerning the use of JACS can be found through a link on the circuit's internet home page: **www.jud12.flcourts.org.** JACS may only be accessed by members of The Florida Bar using their bar number. Each judge serving in the Civil Division of circuit court reserves time in JACS for the setting of hearings, including motions for summary judgment in foreclosure actions.

Effective December 1, 2008, attorneys will be required to have an email address as part of the JACS registration process. Hearing dates reserved and cancelled through JACS will be confirmed through email generated by the calendaring system. Instructions for updating JACS registration are available on the circuit's web site.

The judges have published their policies governing the setting of hearings on the JACS home page. Because the policies differ from judge to judge, they should be consulted by counsel and regularly reviewed for updates and modifications. This is especially true when new judges rotate into the Civil Division. Blocks of time have been set aside specifically for foreclosures.

C. Procedures for Scheduling and Canceling Summary Judgment Hearings

Several law firms engaged in volume foreclosure filings have developed the practice of reserving hearing time for summary judgment before the motion is filed and have consistently failed to comply with judges' cut-off dates for filing summary judgment packets. This has resulted in the waste of valuable hearing time for other litigants when the motion is not forthcoming and the hearing is not canceled by the party. The following procedures are necessary to facilitate the efficient disposition of large numbers of foreclosure filings:

1. No Plaintiffs' Summary Judgment Hearings to be Scheduled Without a Motion Ready for Filing

Hearing time for plaintiffs motions for summary judgments in foreclosure cases shall not be reserved on JACS until the motion, with complete supporting documentation, is prepared and ready for filing with the Clerk. Motions and summary judgment packets shall be transmitted to the Clerk immediately after the hearing time is obtained. The judges will monitor compliance with this requirement and may cancel hearings that have been set without the contemporaneous filing of a motion. Sanctions also may be imposed for chronic disregard of this requirement.

Contested summary judgments filed by plaintiff or defense should be set for hearing on the judges' regular civil docket.

2. Summary Judgment Pleadings and Related Documents to be Sent to Clerks; Checklist Required

Subject to the transition rules in Section IV, on or after December 1, 2008, parties seeking summary judgment in foreclosure actions shall transmit the documentation supporting the motion, including the original proposed Final Judgment, note and mortgage, to the Clerks. **They are not to be sent to the judges' chambers, nor are copies of these papers to be sent to chambers.** As noted above, no summary judgment hearing time shall be obtained on JACS until the motion for summary judgment and supporting documentation is in final form and ready for immediate filing with the Clerk.

The summary judgment documentation submitted to the Clerks shall include the Twelfth Circuit's ***Mortgage Foreclosure Summary Judgment Checklist***, a form approved by the chief judge and available on the circuit's website, **www.jud12.flcourts.org.** The checklist requires counsel's confirmation that appropriate steps have been taken to prepare the case for disposition by summary judgment, and that all documents supporting the motion have been timely filed or submitted.

The ***Mortgage Foreclosure Summary Judgment Checklist*** requires counsel to accurately set forth the status of the case and to inform the court of any deficiencies. The ***Checklist*** shall be signed by the attorney of record. Clerks will review counsel's submissions to verify that the ***Notice to Homeowners Facing Foreclosure***, discussed below, was attached to the summons whenever the ***Checklist*** indicates the subject property is a homestead. No further verification of the ***Checklist*** will be performed by the Clerks. It remains the responsibility of the filing attorney to accurately complete the ***Checklist***, and the Clerks and the court will rely upon the attorney's representation as to its accuracy.

Hearings on motions for summary judgment may be canceled if the forms required by this Administrative Order (e.g., circuit-approved Final Judgment, *Mortgage Foreclosure Summary Judgment Checklist*) do not accompany the summary judgment motion or are not used, or if the documents required by the checklist are missing and their absence is not adequately explained.

For good cause shown, upon the request of a party the assigned judge may waive the requirements of this Administrative Order or the production of any item or document required by the checklist. Such requests shall be made before the checklist is filed and the hearing on the motion for summary judgment is scheduled.

3. Procedures Applicable to Cases Filed On or After 12/1/08 - Prerequisite Relating to Homestead Properties - Compliance with Homestead Foreclosure Conciliation Program - Attorney's Certificate;

By separate Administrative Order, Number 08-15.1, the circuit has adopted a Homestead Foreclosure Conciliation Program (HFCP) which must be complied with in foreclosure actions filed on or after December 1, 2008, before a summary judgment hearing is to be scheduled to foreclose a lien on **homestead property** in the three counties of the Twelfth Circuit.

On or after December 1, 2008, when a foreclosure complaint is filed against any residential property, or in any case where the plaintiff is in doubt as to status of the property as a homestead, Administrative Order 08-15.1 requires counsel to include with the summons a ***Notice to Homeowners Facing Foreclosure,*** which explains the program and invites eligible homeowners to consider participation in the Program.

In addition, Administrative Order 08-15.1 requires the filing of an ***Attorney's Certificate of Compliance with the Homestead Conciliation Program*** when the motion for summary judgment is filed and the hearing date is booked on JACS. This is a prerequisite to scheduling a hearing on the motion for summary judgment and is part of the *Mortgage Foreclosure Summary Judgment Checklist* and documentation required to schedule a summary judgment hearing. [Forms available on circuit website, **www.jud12.flcourts.org.**]

4. Cancellation of Summary Judgment Hearings

JACS should be used to cancel summary judgment hearings whenever possible. However, JACS will not authorize a cancellation when it would result in short notice to the parties. When JACS does not permit cancellation, the party who has noticed the hearing may cancel it telephonically by contacting the judge's judicial assistant. The phone call should be followed promptly by a Notice of Cancellation filed with the Clerk. When the cancellation occurs shortly before the hearing, persons who are required to receive notice should be advised of the cancellation by the most expeditious means.

5. Cancellation of Foreclosure Sales

In the event it becomes necessary to cancel a foreclosure sale on short notice, the original motion to cancel and a proposed order shall be filed with the Clerk with copies FAXED to the judge's chambers. These motions will be reviewed expeditiously, and a copy of the signed order will be faxed or emailed to the attorney. Upon request of counsel, Clerks

may set new sale dates upon receiving written notification from judges that a sale has been cancelled.

D. Appointment of Circuit Foreclosure Liaison

Parties who have filed **five (5)** or more foreclosure actions in the Twelfth Circuit in calendar years 2007 or 2008, or who file or intend to file **five (5)** or more foreclosure actions in any subsequent calendar year shall be required to comply with the following:

1. The party shall appoint an agent to serve as its **circuit foreclosure liaison**. The name, phone number (including extension), email and mailing address of the liaison, who may be an attorney or employee of the party, shall be provided to **courtweb@jud12.flcourts.org**;

For parties who currently qualify under this paragraph, the contact information shall be provided to the office of the Trial Court Administrator on or before **January 1, 2009**. For those parties who do not yet qualify, appointment of the liaison and notification shall occur upon the filing of the **fifth** foreclosure action in the circuit in that calendar year.

2. The liaison shall be informed of the Twelfth Circuit's unique foreclosure procedures and administrative orders, be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the party's cases through the courts.

3. The Trial Court Administrator shall maintain the circuit's liaison list which shall be made available and used by judges to communicate with parties regarding issues affecting the efficiency of the foreclosure process. **Parties shall promptly inform the Trial Court Administrator of any changes in liaison personnel and shall take such steps as may be necessary to keep the list current and accurate.**

4. The liaison shall act as the court's point of contact in the event a party fails to comply with administrative orders affecting foreclosure litigation in the circuit or the court has a need to communicate with a party concerning administrative matters of mutual interest.

II. E-Filing of Mortgage Foreclosures Required in Manatee and Sarasota Counties For Cases Filed or Set for Summary or Final Hearing On or After December 1, 2008

The Clerks of Manatee and Sarasota Counties are part of a Supreme Court sanctioned project to establish procedures for the electronic filing of pleadings. Known as E-Filing, this innovative system saves litigants money and reduces processing and document review time for the Clerks. **Except for a limited number of original documents or exhibits, such as notes and mortgages, E-Filing eliminates the necessity of providing hardcopies of documents or pleadings to the Clerk. The electronic version replaces them.** Judges and attorneys of record will be able to view the electronically filed documents on line.

Commencing December 1, 2008, parties are required to use the E-Filing system when filing foreclosure pleadings, motions and litigation-related documents in Manatee and Sarasota Counties, and in connection with summary or final judgment hearings scheduled on or after that date. E-Filing procedures are similar in both counties but are not identical. Parties shall use the E-Filing word processing formats prescribed by the Clerks. Litigants and their counsel should consult each Clerk's website for detailed instructions: **www.sarasotaclerk.com/** or **www.manateeclerk.com/**

A. Requests for Exemption: Requests for exemption from E-Filing requirement may be directed to the Clerk, and if denied, appealed by written request for consideration and final decision by the Chief Judge.

B. Rules for E-Filers: The following rules apply to parties E-Filing in Sarasota and Manatee Counties on or after December 1, 2008 or who set final or summary judgment hearings on or after that date:

1. **Original Documents:** Original documents such as promissory notes and mortgages shall be delivered to the Clerk and accompanied by a Notice of Filing. Copies of original documents shall be included in the parties' E-Filing submission.

2. **Parties to Provide Envelopes for Clerk's Use:** E-Filers submitting proposed foreclosure Final Judgments shall deliver to the Clerk **four (4)** self-addressed, stamped envelopes for **each party** entitled to receive conformed copies. For example, in a case with a single plaintiff and a single defendant, the number of envelopes required is eight. The envelopes shall be mailed to the Clerk contemporaneous with the E-Filing of the proposed Final Judgment. The clerk's case number shall be written on the outside of the envelopes. These will be used to provide conformed copies of the judgment, Notice of Sale, Certificate of Sale, and Certificate of Title to the affected parties.

3. **Other Orders Submitted by Counsel**: In the course of litigation, it may be necessary for E-Filers to submit proposed or stipulated orders for the judge's consideration. These shall be E-Filed; however, in addition hard copies shall be sent directly to the assigned judge. The copies sent to the judge shall be accompanied by self-addressed, stamped envelopes for each party entitled to receive conformed copies.

III. Sanctions for Non-Compliance

Failure to comply with the provisions of this Administrative Order may result in the cancellation of hearings, termination of the privilege of telephone hearings, or other sanctions. Chronic offenders may be denied access to JACS and required to request hearing time by email, which may result in substantial delays in the processing of cases.

IV. Transitional Issues and Effective Date

This Administrative Order shall be effective December 1, 2008 as to cases filed on or after that date, subject to the following:

Procedures Applicable to Cases Filed Before 12/1/08

The date JACS is **accessed** to schedule a hearing controls whether a case set for summary judgment proceeds under the new circuit rules or the old rules:

A. If by November 30, 2008, a party has accessed JACS and reserved a summary judgment or final hearing for a date occurring on or after December 1, 2008, the case may continue under the prior procedure. For example, if on November 14, 2008, hearing time was obtained for December 14, 2008, the case may proceed under the old rules. Foreclosure packets may continue to be sent to the judges for those cases, and the older checklists and summary judgment procedures may be used. E-Filing and the new Checklist may be used at any time at the option of the filing party.

B. For cases pending as of December 1, 2008, if JACS is accessed on or after December 1, 2008, and a summary judgment or final hearing date is scheduled, the requirements of this Administrative Order, including E-Filing, use of the standard form Final Judgment, and the new Foreclosure Checklist, shall apply. For example, on a case filed before December 1, 2008, if on December 4, 2008, the attorney accesses JACS and secures a hearing time for January 15, 2009, the case proceeds under the new rules. [However, note that cases filed before 12/1/08 are exempt from the Homestead Foreclosure Conciliation Program.]

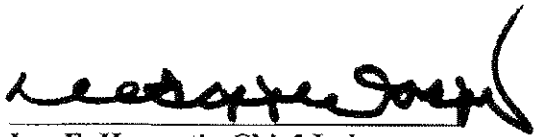
Homestead Foreclosure Conciliation Program

The Homestead Foreclosure Conciliation Program requirements of Section I(C)(3) apply only to cases **filed** on or after December 1, 2008.

Applicability of Administrative Order 2002-16.2

Administrative Order 2002-16.2 remains in force as to cases filed before December 1, 2008, but is vacated as to cases filed on or after that date.

DONE AND ORDERED in Sarasota, Sarasota County this 25th day of November, 2008.

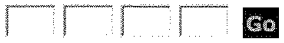


Lee E. Haworth, Chief Judge

cc: All Judges in the Twelfth Circuit
Gulf Coast Legal Services
Legal Aid of Manasota
Florida Rural Legal Services
Florida Legal Services

Clerks of Court, Twelfth Circuit
Manatee County Bar Association
Venice-Englewood Bar Association
Sarasota Bar Association
Law firms representing lenders (copies provided for comment since 10/10/08)

INDIANA



Information Maintained by the Office of Code Revision Indiana Legislative Services Agency

IC 32-30-10.5

Chapter 10.5. Foreclosure Prevention Agreements for Residential Mortgages

IC 32-30-10.5-1

Legislative findings; purpose

Sec. 1. (a) The general assembly makes the following findings:

(1) Indiana faces a serious threat to its state economy and to the economies of its political subdivisions because of Indiana's high rate of residential mortgage foreclosures, which constitutes an emergency.

(2) Indiana's high rate of residential mortgage foreclosures has adversely affected property values in Indiana, and may have an even greater adverse effect on property values if the foreclosure rate continues to rise.

(3) It is in the public interest for the state to modify the foreclosure process to encourage mortgage modification alternatives.

(b) The purpose of this chapter is to avoid unnecessary foreclosures of residential properties and thereby provide stability to Indiana's statewide and local economies by:

(1) requiring early contact and communications among creditors, their authorized agents, and debtors in order to engage in negotiations that could avoid foreclosure; and

(2) facilitating the modification of residential mortgages in appropriate circumstances.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-2

"Creditor"

Sec. 2. (a) As used in this chapter, "creditor" means a person:

(1) that regularly engages in the extension of mortgages that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term includes a mortgage servicer.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-3

"Debtor"

Sec. 3. As used in this chapter, "debtor", with respect to a mortgage, refers to the maker of the note secured by the mortgage.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-4

"Foreclosure prevention agreement"

Sec. 4. As used in this chapter, "foreclosure prevention

agreement" means a written agreement that:

(1) is executed by both the creditor and the debtor; and

(2) offers the debtor an individualized plan that may include:

(A) a temporary forbearance with respect to the mortgage;

(B) a reduction of any arrearage owed by the debtor;

(C) a reduction of the interest rate that applies to the mortgage;

(D) a repayment plan;

(E) a deed in lieu of foreclosure;
(F) reinstatement of the mortgage upon the debtor's payment of any arrearage;
(G) a sale of the property; or
(H) any loss mitigation arrangement or debtor relief plan established by federal law, rule, regulation, or guideline.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-5
"Mortgage"
Sec. 5. As used in this chapter, "mortgage" means a loan in which a first mortgage, or a land contract that constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-6
"Mortgage foreclosure counselor"
Sec. 6. As used in this chapter, "mortgage foreclosure counselor" means a foreclosure prevention counselor who is part of, or has been trained or certified by, the Indiana Foreclosure Prevention Network.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-7
"Mortgage servicer"
Sec. 7. As used in this chapter, "mortgage servicer" means the last person to whom:
(1) a debtor in a mortgage; or
(2) the debtor's successor in interest;
has been instructed to send payments on the mortgage.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-8
Presuit notice before filing of foreclosure action; contents; notice upon filing of action; debtor's right to settlement conference; exceptions to notice requirements
Sec. 8. (a) This section applies to a foreclosure action that is filed after June 30, 2009. Except as provided in subsection (e) and section 10(g) of this chapter, not later than thirty (30) days before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail a presuit notice on a form prescribed by the Indiana

housing and community development authority created by IC 5-20-1-3. In prescribing the form required by this section, the Indiana housing and community development authority shall include in the notice the statement set forth in IC 24-5.5-3-1. In addition, the notice required by this subsection must:
(1) inform the debtor that:
(A) the debtor is in default; and
(B) the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and
(2) provide the contact information for the Indiana Foreclosure Prevention Network.
(b) The notice required by subsection (a) shall be sent to:
(1) the address of the mortgaged property; or
(2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.
If the creditor provides evidence that the notice required by subsection (a) was sent by certified mail, return receipt requested, and as prescribed by this subsection, it is not necessary that the debtor accept receipt of the notice for an action to proceed as allowed under this chapter.
(c) Except as provided in subsection (e) and section 10(g) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. The notice must be in a form prescribed by

the Indiana housing and community development authority created by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice is served, of the debtor's intent to participate in a settlement conference.

(d) In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009, the creditor shall attach to the complaint filed with the court a copy of the notices sent to the debtor under subsections (a) and (c).

(e) A creditor is not required to send the notices described in this section if:

(1) the loan is secured by a dwelling that is not the debtor's primary residence;

(2) the loan has been the subject of a prior foreclosure prevention agreement under this chapter and the debtor has defaulted with respect to the terms of that foreclosure prevention agreement; or

(3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-9

Conditions for court's issuance of judgment of foreclosure; exceptions

Sec. 9. (a) Except as provided in subsection (b), after June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

(1) The creditor has given the notice required under section 8(c) of this chapter.

(2) The debtor either:

(A) does not contact the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under section 8(c) of this chapter; or

(B) contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a conference under section 8(c) of this chapter and, upon conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(3) At least sixty (60) days have elapsed since the date the notice required by section 8(a) of this chapter was sent, unless the mortgaged property is abandoned.

(b) If the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the creditor and the debtor:

(1) a settlement conference is not required under this chapter; and

(2) the conditions set forth in subsection (a) do not apply, and the foreclosure action may proceed as otherwise allowed by law.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-10

Debtor's request for settlement conference; court's notice; contents; conference participants; persons representing the creditor; duty to notify court of result; settlement conference to satisfy court's mediation or alternative dispute resolution rules

Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Encourage the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to bring to the settlement conference the

following documents needed to engage in good faith negotiations with the creditor:

(A) Documentation of the debtor's present and projected future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.

(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause

with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(4) Require the creditor to bring to the settlement conference the following transaction history for the mortgage:

(A) A copy of the original note and mortgage.

(B) A payment record substantiating the default.

(C) An itemization of all amounts claimed by the creditor as being owed on the mortgage.

(D) Any other documentation that the court determines is needed.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

(6) Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place designated by the court, on the date and time specified in the notice under subdivision (1) unless the parties submit to the court a stipulation to:

(A) modify the date, time, and place of the settlement conference; or

(B) hold the settlement conference by telephone at a date and time agreed to by the parties.

If the parties stipulate under clause (B) to conduct the settlement conference by telephone, the parties shall ensure the availability of any technology needed to allow simultaneous participation in the settlement conference by all participants.

(b) An attorney for the creditor shall attend the settlement conference, and an authorized representative of the creditor shall be available by telephone during the settlement conference. In addition, the court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this section, and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.

(c) At the court's discretion, a settlement conference may or may not be attended by a judicial officer.

(d) The creditor shall ensure that any person representing the

creditor:

(1) at a settlement conference scheduled under subsection (a); or

(2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement;

has authority to represent the creditor in negotiating a foreclosure prevention agreement with the debtor.

(e) If, as a result of a settlement conference held under this section, the debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties, and each party shall retain a copy of the signed agreement. Not later than seven (7) business days after the signing of the foreclosure prevention agreement, the creditor shall file with the court a copy of the signed agreement. At the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention agreement.

(f) If, as a result of a settlement conference held under this section, the debtor and the creditor are unable to agree on the terms of a foreclosure prevention agreement:

(1) the creditor shall, not later than seven (7) business days after the conclusion of the settlement conference, file with the court a notice indicating that the settlement conference held under this section has concluded and a foreclosure prevention agreement was not reached; and

(2) the foreclosure action filed by the creditor may proceed as otherwise allowed by law.

(g) If:

(1) a foreclosure is dismissed by the creditor under subsection (e) after a foreclosure prevention agreement is reached; and

(2) a default in the terms of the foreclosure prevention agreement later occurs;

the creditor or its assigns may bring a foreclosure action under IC 32-30-10-3 without sending the notices described in section 8 of this chapter.

(h) Participation in a settlement conference under this section satisfies any mediation or alternative dispute resolution requirement established by court rule.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-11
Foreclosure actions filed before July 1, 2009; court's duty to provide notice of availability of settlement conference

Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action shall serve notice of the

availability of a settlement conference under section 8(c) of this chapter.
As added by P.L.105-2009, SEC.20.

KENTUCKY/JEFFERSON COUNTY

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
30TH JUDICIAL CIRCUIT

ORDER

Jefferson Circuit Court notes that the mortgage foreclosure crisis and current economic downturn are resulting in a large increase in the number of foreclosure cases that have been and are likely to be filed in Jefferson Circuit Court. This increase requires the expenditure of substantial court resources and has dire consequences for the homeowner, neighborhood, and larger community.

Kentucky Rules of Civil Procedure (CR 16) give the court the authority to implement case management programs or provisions that will assist the court and litigants in simplifying issues and "other matters as may aid the disposition of the action." JRP 1303 allows the court at any time on its own motion or on the motion of any party to refer a case for alternative dispute resolution.

Pursuant to the authority cited above, this court hereby adopts and implements the Residential Foreclosure Conciliation Program. The program will provide early court intervention in foreclosure cases involving residential owner-occupied property by referring eligible cases for a conciliation conference. The conciliation conference will be held before a Master Commissioner and will occur before the sale of the property in question. The purpose of the conference will be to explore the possibility of settlement before a court-ordered sale of the property.

The court will issue a Notice in every case filed after the effective date of this order advising the Defendant of the eligibility requirements, the date of the Conciliation Conference, and the affirmative actions the Defendant must take to preserve that conciliation date. Once the

Defendant takes the necessary actions, he or she shall file a Certificate of Compliance with the Court at least two weeks prior to the conciliation date. For all cases in which such a certificate has been filed, the Plaintiff must participate in the Conciliation Conference before a sale can be held.

So ordered this 30th day of March, 2009.

Judge James Shake, Division 2

Judge McKay Chauvin, Division 8

Judge Susan Gibson, Division 12

Judge Frederic Cowan, Division 13

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
JEFFERSON COUNTY JUDICIAL CENTER
700 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202

30TH JUDICIAL CIRCUIT

www.courts.ky.gov

If you live in and own the home being foreclosed on, the Jefferson County Circuit Court has tentatively scheduled a meeting for you and your lender at the Master Commissioner's office on **July 9, 2009** at 10 a.m. to discuss alternatives to foreclosure. The Master Commissioner's Office is on the 4th Floor of 514 West Liberty Street. This meeting will:

- Give you a chance to discuss alternatives to foreclosure with your lender.
- Give you the opportunity to be represented by an attorney at no cost to you.
- Not stop the foreclosure process.

The Complaint you received today is the beginning of the foreclosure process, not the end. It is important to act within 7 days. If you wait longer than 20 days, you may lose some of your legal rights. Here is what you need to do:

1. Do not move out of your home.
2. Contact the Kentucky Homeownership Protection Center by phone at 1-866-830-7868 or by visiting www.protectmykyhome.org
3. Attend a free foreclosure clinic at the Legal Aid Society (416 W. Muhammad Ali Blvd. in Louisville). These clinics are held every Tuesday at 11 a.m. and Thursday at 6 p.m.
4. Meet with a free housing counselor (you will be referred to one when you call the Kentucky Homeownership Protection Center). The housing counselor will help you complete and return a financial packet to your lender.
5. **If you take these steps,** you must complete a Certification Form and submit it to the Court. A lawyer or housing counselor will help you complete this form.

An outreach worker will stop by your house in the next 30 days to answer any questions. If you would like to speak with someone sooner, please call the Legal Aid Society at 584-1254.

This project is brought to you by the following partners:
The Jefferson County Circuit Court, Kentucky Homeownership Protection Center, Louisville Urban League, Housing Partnership, Inc., Making Connections Louisville, Louisville Bar Association, and the Legal Aid Society.

Filed May 11-15, 2009

MAINE

PUBLIC Law, Chapter 402

HP0994
LD 1418

Emergency Signed on 2009-06-15 00:00:00.0 - First Regular Session - 124th Maine Legislature

LR 1678
Item 1

An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State's rate of mortgages in foreclosure is rising to unprecedented levels, both for prime and subprime mortgages; and

Whereas, foreclosures are expected to continue in the State because homeowners will not be able to afford payments due to rising adjustable mortgage payments, rising unemployment and job loss; and

Whereas, homeowners are expected to have continued problems selling their properties at the value of their mortgages due to falling housing prices; and

Whereas, foreclosures contribute to the decline in the State's housing market, loss of property values and loss of tax revenues; and

Whereas, the number of foreclosure actions in the courts is rapidly increasing and the current system for resolving foreclosure actions is creating a burden on the court system; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §18-B, sub-§12 is enacted to read:

12. Mediation involving mortgage foreclosures on owner-occupied residential property. The foreclosure mediation program is a program within the Supreme Judicial Court to provide mediation in the courts throughout the State pursuant to Title 14, section 6321-A.

A. The Supreme Judicial Court, or a person or organization designated by the court, shall administer the foreclosure mediation program.

B. A foreclosure mediation program fund is established as a nonlapsing, dedicated

fund within the Administrative Office of the Courts. Fees collected to support mediation services pursuant to Title 14, section 6321-A, subsection 3 must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 14, section 6321-A.

Sec. 2. 4 MRSA §104, as amended by PL 2009, c. 136, §1, is further amended to read:

§ 104. Active retired justices

Any Justice of the Superior Court who has retired from the court under this chapter in effect prior to December 1, 1984, or any Justice of the Superior Court who retires or terminates that justice's service on the court in accordance with chapter 27, except for a disability retirement, is eligible for appointment as an Active Retired Justice of the Superior Court. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, may appoint any eligible justice as an Active Retired Justice of the Superior Court for a term of 7 years, unless sooner removed. That justice may be reappointed for a like term. Any justice so appointed and designated thereupon constitutes a part of the court from which that justice has retired and has the same jurisdiction and is subject to the same restrictions therein as before retirement. An Active Retired Justice of the Superior Court may serve as an arbitrator and conduct arbitration in accordance with rules that may be adopted by the Supreme Judicial Court, except that nothing in this section requires the Supreme Judicial Court to adopt those rules. An Active Retired Justice of the Superior Court may chair screening panels in accordance with Title 24, chapter 21, subchapter 4-A. An Active Retired Justice of the Superior Court may act only in the cases and matters and hold court only at the terms and times as that justice is directed and assigned by the Chief Justice of the Superior Court. Any Active Retired Justice of the Superior Court may be directed by the Chief Justice to hold any term of the Superior Court in any county and when so directed has authority and jurisdiction therein the same as if that justice were the regular justice of that court. Whenever the Chief Justice of the Superior Court so orders, that justice may hear all matters and issue all orders, notices, decrees and judgments in vacation that any justice of that Superior Court is authorized to hear and issue. An Active Retired Justice of the Superior Court may be assigned by the Chief Justice of the Superior Court to act as a mediator for the foreclosure mediation program in accordance with Title 14, section 6321-A, subsection 7. An Active Retired Justice of the Superior Court receives reimbursement for expenses actually and reasonably incurred in the performance of that justice's duties.

Sec. 3. 4 MRSA §157-B, as amended by PL 2009, c. 136, §2, is further amended to read:

§ 157-B. Active retired judges; appointment

Any Judge of the District Court who has retired from the court under this chapter prior to December 1, 1984, or any Judge of the District Court who retires or terminates that judge's service on the court in accordance with chapter 27, except for a disability

retirement, is eligible for appointment as an Active Retired Judge of the District Court as provided. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, may appoint any eligible judge to be an Active Retired Judge of the District Court for a term of 7 years, unless sooner removed. That judge may be reappointed for a like term. Any judge so appointed and designated thereupon constitutes a part of the court from which that judge has retired and has the same jurisdiction and is subject to the same restrictions therein as before retirement. An Active Retired Judge of the District Court may serve as an arbitrator and conduct arbitration in accordance with rules that may be adopted by the Supreme Judicial Court, except that nothing in this section requires the Supreme Judicial Court to adopt those rules. An Active Retired Judge of the District Court may chair screening panels in accordance with Title 24, chapter 21, subchapter 4-A. An Active Retired Judge of the District Court may act only in those cases and matters and hold court only at those sessions and times as that judge is directed and assigned by the Chief Judge of the District Court. Any Active Retired Judge of the District Court may be directed by the Chief Judge to hold any session of the District Court in any district and when so directed has authority and jurisdiction therein the same as if that judge were the regular judge of that court and, whenever the Chief Judge of the District Court so orders, may hear all matters and issue all orders, notices, decrees and judgments that any Judge of that District Court is authorized to hear and issue. An Active Retired Judge of the District Court receives reimbursement for expenses actually and reasonably incurred in the performance of that judge's duties. An Active Retired Judge of the District Court may be assigned by the Chief Judge of the District Court to act as a mediator for the foreclosure mediation program in accordance with Title 14, section 6321-A, subsection 7.

Sec. 4. 9-A MRSA §6-116, sub-§2, as amended by PL 1995, c. 397, §1, is further amended to read:

2. Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with the licensing, registration or other regulatory functions of the administrator; ~~and~~

Sec. 5. 9-A MRSA §6-116, sub-§3, as enacted by PL 1985, c. 763, Pt. A, §51, is amended to read:

3. Proposed loan documents and other commercial paper submitted to be approved for use and not yet available to the general public or customers of the submitting institution or firm ~~.~~; and

Sec. 6. 9-A MRSA §6-116, sub-§4 is enacted to read:

4. Any contact information or financial information relating to a mortgagor submitted pursuant to Title 14, section 6111, subsection 3-A and any written notice sent to a mortgagor pursuant to Title 14, section 6111, subsection 4-A that includes a mortgagor's contact information.

Sec. 7. 9-A MRSA §9-408 is enacted to read:

§ 9-408. Violation of the Maine Unfair Trade Practices Act

Any violation of this article constitutes a violation of the Maine Unfair Trade Practices Act.

Sec. 8. 9-B MRSA §162, sub-§7 is enacted to read:

7. Disclosure of notice of mortgagor's right to cure. The financial records pertain to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer Credit Protection pursuant to Title 14, section 6111, subsection 3-A.

Sec. 9. 14 MRSA §2401, sub-§3, as amended by PL 1993, c. 114, §2 and affected by §4, is further amended to read:

3. Judgment required; recording and contents. The judgment in the proceeding must be signed by the judge and contain the following provisions:

A. The names and addresses, if known, of all parties to the action, including the counsel of record;

B. The docket number;

C. A finding that all parties have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure and, if the notice was served or given pursuant to an order of a court, including service by publication, that the notice was served or given pursuant to the order;

D. An adequate description of real estate involved; ~~and~~

F. A certification to be signed by the clerk after the appeal period has expired, certifying that the applicable period has expired without action or the final judgment has been entered after remand following appeal ~~.~~; and

G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure and sale," the street address of the real estate involved, if any, and the book and page number of the mortgage.

Unless a proposed judgment with the provisions required in this subsection is presented to the court at the time of the court's decision, the court shall name the party responsible for preparing a judgment with the required provisions. An attested copy of the judgment with the signed clerk's certification must be recorded in the registry of deeds for the county or counties where the subject property is located within one year of the entry of the final judgment unless otherwise ordered by the court. For the purposes of this section, a judgment is not final until all applicable appeal periods have expired and any appellate proceedings and subsequent actions on remand, if any, have been concluded. The court shall name the party responsible for recording the attested copy of the judgment and for paying the appropriate recording fees. The judgment has no effect as to any person not a party to the proceeding who has no actual knowledge of the judgment unless an attested copy of the judgment is recorded in accordance with this section. A judgment of foreclosure and sale for recording may not be recorded in the registry of deeds unless it is in compliance with the requirements of this section. Failure to comply with this section

does not affect the validity of the underlying judgment.

Sec. 10. 14 MRSA §6111, sub-§1, as amended by PL 1997, c. 579, §1, is further amended to read:

1. Notice; payment. With respect to mortgages upon residential property located in this State when the mortgagor is occupying all or a portion of the property as the mortgagor's primary residence and the mortgage secures a loan for personal, family or household use, the mortgagee may not accelerate maturity of the unpaid balance of the obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any required payment, tax payment or insurance premium payment, by any method authorized by this chapter until at least ~~30~~ 35 days after the date that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor and any cosigner against whom the mortgagee is enforcing the obligation secured by the mortgage at the last known addresses of the mortgagor and any cosigner that the mortgagor has the right to cure the default by full payment of all amounts that are due without acceleration, including reasonable interest and late charges specified in the mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment of the amounts before the date specified in the notice, the mortgagor is restored to all rights under the mortgage deed as though the default had not occurred.

Sec. 11. 14 MRSA §6111, sub-§1-A is enacted to read:

1-A. Contents of notice. A mortgagee shall include in the written notice under subsection 1 the following:

A. The mortgagor's right to cure the default as provided in subsection 1;

B. An itemization of all past due amounts causing the loan to be in default;

C. An itemization of any other charges that must be paid in order to satisfy the full obligations of the loan;

D. A statement that the mortgagor may have options available other than foreclosure, that the mortgagor may discuss available options with the mortgagee, the mortgage servicer or a counselor approved by the United States Department of Housing and Urban Development and that the mortgagor is encouraged to explore available options prior to the end of the right-to-cure period;

E. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee;

F. The name, address, telephone number and other contact information for all counseling agencies approved by the United States Department of Housing and Urban Development operating to assist mortgagors in the State to avoid foreclosure; and

G. Where mediation is available as set forth in section 6321-A, a statement that a mortgagor may request mediation to explore options for avoiding foreclosure

judgment.

Sec. 12. 14 MRSA §6111, sub-§3-A is enacted to read:

3-A. Information; Bureau of Consumer Credit Protection. Within 3 days of providing written notice to the mortgagor as required by subsections 1 and 1-A, the mortgagee shall file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

A. The name and address of the mortgagor and the date the written notice required by subsections 1 and 1-A was mailed to the mortgagor and the address to which the notice was sent;

B. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and

C. Other information, as permitted by state and federal law, requested of the mortgagor by the Bureau of Consumer Credit Protection.

Sec. 13. 14 MRSA §6111, sub-§3-B is enacted to read:

3-B. Report. On a quarterly basis, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices received pursuant to subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the court and the Department of Professional and Financial Regulation, Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.

Sec. 14. 14 MRSA §6111, sub-§4-A is enacted to read:

4-A. Letter to mortgagor. Within 3 days of receiving electronic information from the mortgagee as set forth in subsection 3-A, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall send a written notice to the mortgagor that includes a summary of the mortgagor's rights and available resources, including information concerning the foreclosure mediation program as established in section 6321-A.

Sec. 15. 14 MRSA §6112 is enacted to read:

§ 6112. Statewide outreach

To the extent resources are available pursuant to subsection 4, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall engage in the following activities.

1. **Hotline.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors approved by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.

2. **Outreach; housing counseling services.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts with nonprofit organizations that provide housing counseling services and mortgage assistance.

3. **Form.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, after consultation with interested parties, shall develop for use by the Supreme Judicial Court a one-page form notice for making a request for mediation and making an answer to a foreclosure complaint as described in section 6321-A, subsection 2.

4. **Funding.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a nonlapsing, dedicated account for the deposit of revenues transferred from the Department of Administrative and Financial Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and for any funds received from any public or private source. The Bureau of Consumer Credit Protection shall use the account to cover the costs of carrying out the duties in this section and section 6111, subsections 3-A, 3-B and 4-A, and the funds in the account may not be used for any other purpose.

5. **Report.** Beginning January 1, 2010, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report every 6 months on the revenues received pursuant to subsection 4, the expenditures made to carry out the purposes of this section, any financial orders submitted by the bureau and any updated assumptions related to the bureau's revenues and expenditures in accordance with this section. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

Sec. 16. 14 MRSA §6203-A, first ¶, as amended by PL 1995, c. 106, §1, is further amended to read:

Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership, limited liability company or trustee of a trust and that contains a power of sale, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without

action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must prominently state the street address of the real estate encumbered by the mortgage deed, if any, and the book and page number of the mortgage. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. A copy of the notice must , at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, ~~or~~ may be sent by registered mail addressed to ~~it~~ the mortgagor or the mortgagor's representative at ~~its~~ the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. The mortgagee shall provide a copy of the notice to a tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any tenant. Notice to a tenant may be served on the tenant by sheriff or may be sent by first class mail and registered mail at the tenant's last known address. No less than 21 days after service of the notice required by this section, the mortgagee may institute an action pursuant to section 6001. This paragraph may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the order of priorities set out in section 6205.

Sec. 17. 14 MRSA §6321, 3rd ¶, as amended by PL 2007, c. 391, §9, is further amended to read:

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall within 10 days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each

registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, if any, which must be prominently stated on the first page of the complaint, state the book and page number of the mortgage, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk's certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. Within 3 days of recording a copy of the complaint or a clerk's certificate of the filing in the registry of deeds, the mortgagee shall provide a copy of the complaint or of the clerk's certificate that prominently states, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage to the municipal assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of any land leased by the mortgagor.

Sec. 18. 14 MRSA §6321-A is enacted to read:

§ 6321-A. Foreclosure mediation program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Court" means the Supreme Judicial Court.

B. "Program" means the foreclosure mediation program established pursuant to subsection 3.

2. Notice; summons and complaint; foreclosure proceedings. When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property of no more than 4 units that is the primary residence of the owner-occupant, the plaintiff shall attach to the front of the foreclosure complaint a one-page form notice to the defendant as developed by the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection in accordance with this subsection and section 6112, subsection 3. The form notice must be written in language that is plain and readily understandable by the general public.

At a minimum, the form notice must contain the following:

A. A statement that failure to answer the complaint will result in foreclosure of the property subject to the mortgage;

B. A sample answer and an explanation that the defendant may fill out the form and return it to the court in the envelope provided as the answer to the complaint. If the debtor returns the form to the court, the defendant does not need to file a more formal answer or responsive pleading and will be scheduled for mediation in accordance with this section; and

C. A description of the program.

3. Foreclosure mediation program established. Under the authority granted in Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation program to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must use the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website.

4. Financial information confidential. Except for financial information included as part of a foreclosure complaint or any answer filed with the court, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available as necessary, to the court, the attorneys whose appearances are entered in the case and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used for purposes other than mediation.

5. No waiver of rights. The plaintiff's or defendant's rights in the foreclosure

action are not waived by participating in the program.

6. Commencement of mediation. When a defendant returns the notice required under subsection 2 or otherwise requests mediation or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

7. Provisions of mediation services; filing and fees. The court shall:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

(1) Are trained in mediation and all relevant aspects of the law;

(2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;

(3) Have knowledge of mortgage assistance programs; and

(4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets.

The court may establish a training program for mediators and require that mediators receive such training prior to being appointed;

B. Report annually to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

(1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and

(2) The results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and number of homeowners who default on mortgages within a year after restructuring, to the extent the court has available information;

C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on or after June 15, 2009 to support mediation services to be paid for by the plaintiff; and

D. Make recommendations for any changes to the program to the Legislature.

8. Referral to mortgage assistance programs. At any time during the mediation process, the mediator may refer the defendant to housing counseling or mortgage assistance programs.

9. No entry of judgment. For any foreclosure complaint filed after January 1, 2010 that is scheduled for mediation in accordance with this section, a final judgment may not issue until a mediator's report has been completed pursuant to subsection 13.

10. Application of mediation provisions to ongoing foreclosure proceedings. The requirements of this section apply to foreclosures filed after

January 1, 2010. The court may in its discretion require mediation for an owner-occupied residential property that is the primary residence of the owner-occupant and that is in the foreclosure process but not scheduled for sale before January 1, 2010 and an owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant and that is scheduled for sale before that date.

11. Parties to mediation. A mediator shall include in the mediation process under this section any person the mediator determines is necessary for effective mediation. Mediation and appearance in person is mandatory for:

A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the loan, except that the mortgagee may participate by telephone or electronic means as long as that mortgagee is represented with authority to agree to a proposed settlement;

B. The defendant;

C. Counsel for the plaintiff; and

D. Counsel for the defendant, if represented.

12. Good faith effort. Each party and each party's attorney, if any, must be present at mediation as required by this section and shall make a good faith effort to mediate all issues. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions.

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide. If the report is not the result of a settlement or dismissal of the case, the report must include the outcomes of the Net Present Value Worksheet. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith.

14. Records. The court shall maintain records or other information relating to the program as necessary to meet the reporting requirements in subsection 7, paragraph B.

Sec. 19. 14 MRSA §6322-A is enacted to read:

§ 6322-A. Notice to tenants of foreclosure judgment

The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide a copy of the foreclosure judgment to any residential tenant of the premises. Upon request from a mortgagee, the mortgagor shall provide the name, address and other contact information for any tenant. A tenant who receives written notice under this section is not required to file any responsive pleadings and must receive written notice of all subsequent proceedings including all matters through and including sale of the property. The mortgagee shall provide written notice to the tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential

rental unit. Notice may be provided to a tenant by first class mail and registered mail at the tenant's last known address only after the mortgagee has made 2 good faith efforts to provide written notice to the tenant in person. After providing the notice required by this section, and upon expiration of the redemption period, the mortgagee may institute an action for forcible entry and detainer pursuant to section 6001. This section may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a judicial foreclosure action.

Sec. 20. 14 MRSA §6323, sub-§3 is enacted to read:

3. Extension of deadline. Upon a showing of good cause, the court may extend a deadline established by this section for the publication of the notice of sale or conducting the public sale.

Sec. 21. 36 MRSA §4641-B, sub-§6 is enacted to read:

6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure. Notwithstanding subsection 4, the State Tax Assessor shall monthly pay to the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection the revenues derived from the tax imposed on the transfer of real property by deeds that convey real property back to a lender holding a bona fide mortgage that is genuinely in default, either by deeds from a mortgagor to a mortgagee in lieu of foreclosure or by deeds from a mortgagee to itself at a public sale pursuant to Title 14, section 6323.

Sec. 22. 36 MRSA §4641-C, sub-§2, as repealed and replaced by PL 1993, c. 680, Pt. A, §31, is amended to read:

2. Mortgage deeds. Mortgage deeds, discharges of mortgage deeds and partial releases of mortgage deeds ~~, deeds from a mortgagor to a mortgagee in lieu of foreclosure and deeds from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323~~. For the purposes of this subsection, only the mortgagor is exempt from the tax imposed for a deed in lieu of foreclosure. In the event of a deed to a 3rd party at such a public sale, the tax imposed upon the grantor by section 4641-A applies only to that portion of the proceeds of sale that exceeds the sums required to satisfy in full the claims of the mortgagee and all junior claimants originally made parties in interest in the proceedings or having subsequently intervened in the proceedings as established by the judgment of foreclosure and sale. The tax must be deducted from the excess proceeds . In the event of a deed from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323, the mortgagee is considered to be both the grantor and grantee for purposes of section 4641-A. In the event of a deed in lieu of foreclosure and a deed from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323, the tax applies to the value of the property as that term is defined in section 4641, subsection 3;

Sec. 23. 36 MRSA §4641-C, sub-§13, as enacted by PL 1993, c. 398, §4, is repealed.

Sec. 24. Phase-in of foreclosure mediation program. Notwithstanding the Maine Revised Statutes, Title 14, section 6321-A, subsection 10, beginning July 1, 2009, the Supreme Judicial Court may, in its discretion, implement the foreclosure mediation program established pursuant to Title 14, section 6321-A in those judicial districts that the court determines that the mediation program is most needed as long as the mediation program is available in all judicial districts by January 1, 2010. In any judicial district in which the foreclosure mediation program is implemented before January 1, 2010, the Supreme Judicial Court shall schedule mediation for those foreclosures filed on or after July 1, 2009 in which mediation is required in accordance with Title 14, section 6321-A, subsection 6 and may not issue a foreclosure judgment on those foreclosures until a mediator's report is received pursuant to Title 14, section 6321-A, subsection 13. Before February 15, 2010, the court shall report to the Joint Standing Committee on Insurance and Financial Services on the mediation program and recommend whether changes are needed. The Joint Standing Committee on Insurance and Financial Services may report out a bill to the Second Regular Session of the 124th Legislation based on the recommendations.

Sec. 25. Report on foreclosure mediation program. Before February 15, 2013, the Supreme Judicial Court shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the foreclosure mediation program established pursuant to the Maine Revised Statutes, Title 14, section 6321-A. The court shall report on the performance of the program, including the number of foreclosure filings and foreclosure judgments and the number of foreclosure mediations and the results of the mediation process to the extent the court has available information. The court may consult with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection in gathering information for the report required by this section. The court shall also recommend changes to the foreclosure mediation program, including whether the program should be modified, continued or repealed. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may report out a bill to the First Regular Session of the 126th Legislature based on the court's report and recommendations.

Sec. 26. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides funds for the foreclosure mediation program, including funds for one Director, foreclosure mediation program position, 3 Assistant Clerk positions and one Administrative Assistant position.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
POSITIONS - LEGISLATIVE COUNT	5.000	5.000
Personal Services	$297,231	$319,602
All Other	$451,870	$425,050

OTHER SPECIAL REVENUE FUNDS TOTAL	$749,101	$744,652

JUDICIAL DEPARTMENT		
DEPARTMENT TOTALS	**2009-10**	**2010-11**
OTHER SPECIAL REVENUE FUNDS	**$749,101**	**$744,652**
DEPARTMENT TOTAL - ALL FUNDS	**$749,101**	**$744,652**

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Bureau of Consumer Credit Protection 0091

Initiative: Allocates funds for one Office Specialist II position and related costs to establish a statewide hotline to facilitate a mortgagor's communication with housing counselors and an outreach program in coordination with the Maine State Housing Authority including contracting with nonprofit organizations that provide housing counseling services and mortgage assistance and to collect and disseminate foreclosure information.

OTHER SPECIAL REVENUE FUNDS	**2009-10**	**2010-11**
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	$65,473	$69,405
All Other	$159,534	$136,631
OTHER SPECIAL REVENUE FUNDS TOTAL	$225,007	$206,036

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
DEPARTMENT TOTALS	**2009-10**	**2010-11**
OTHER SPECIAL REVENUE FUNDS	**$225,007**	**$206,036**
DEPARTMENT TOTAL - ALL FUNDS	**$225,007**	**$206,036**

SECTION TOTALS	**2009-10**	**2010-11**
OTHER SPECIAL REVENUE FUNDS	**$974,108**	**$950,688**
SECTION TOTAL - ALL FUNDS	**$974,108**	**$950,688**

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 15, 2009.

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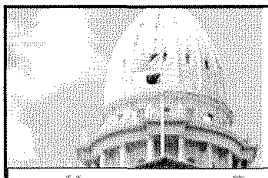

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REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.3205 Definitions.

Sec. 3205.

As used in this section and sections 3205a to 3205d:

(a) "Borrower" means the mortgagor.

(b) "Mortgage holder" means the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage.

(c) "Mortgage servicer" means the servicing agent of the mortgage.

History: Add. 2009, Act 29, Eff. July 5, 2009

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REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

***** 600.3205a THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205a Notice from foreclosing party to borrower; contents; list of housing counselors; service; publication; failure of service; applicability of section and sections 3205b and 3205c.

Sec. 3205a.

(1) Subject to subsection (6), before proceeding with a sale under this chapter of property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party shall serve a written notice on the borrower that contains all of the following information:

(a) The reasons that the mortgage loan is in default and the amount that is due and owing under the mortgage loan.

(b) The names, addresses, and telephone numbers of the mortgage holder, the mortgage servicer, or any agent designated by the mortgage holder or mortgage servicer.

(c) A designation of 1 of the persons named in subdivision (b) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(d) That enclosed with the notice is a list of housing counselors prepared by the Michigan state housing development authority and that within 14 days after the notice is sent, the borrower may request a meeting with the person designated under subdivision (c) to attempt to work out a modification of the mortgage loan to avoid foreclosure and that the borrower may also request a housing counselor to attend the meeting.

(e) That if the borrower requests a meeting with the person designated under subdivision (c), foreclosure proceedings will not be commenced until 90 days after the date the notice is mailed to the borrower.

(f) That if the borrower and the person designated under subdivision (c)

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reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(g) That if the borrower and the person designated under subdivision (c) do not agree to modify the mortgage loan but it is determined that the borrower meets criteria for a modification under section 3205c(1) and foreclosure under this chapter is not allowed under section 3205c (7), the foreclosure of the mortgage will proceed before a judge instead of by advertisement.

(h) That the borrower has the right to contact an attorney, and the telephone numbers of the state bar of Michigan's lawyer referral service and of a local legal aid office serving the area in which the property is situated.

(2) A person who serves a notice under subsection (1) shall enclose with the notice a list prepared by the Michigan state housing development authority under section 3205d of the names, addresses, and telephone numbers of housing counselors approved by the United States department of housing and urban development or the Michigan state housing development authority.

(3) A person shall serve a notice under subsection (1) by mailing the notice by regular first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower, both sent to the borrower's last known address.

(4) Within 7 days after mailing a notice under subsection (3), the person who mails the notice shall publish a notice informing the borrower of the borrower's rights under this section. The person shall publish the information 1 time in the same manner as is required for publishing a notice of foreclosure sale under section 3208. The notice under this subsection shall contain all of the following information:

(a) The borrower's name and the property address.

(b) A statement that informs the borrower of all of the following:

(i) That the borrower has the right to request a meeting with the mortgage holder or mortgage servicer.

(ii) The name of the person designated under subsection (1)(c) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(iii) That the borrower may contact a housing counselor by visiting the Michigan state housing development authority's website or by calling the Michigan state housing development authority.

(iv) The website address and telephone number of the Michigan state housing development authority.

(v) That if the borrower requests a meeting with the person designated under subsection (1)(c), foreclosure proceedings will not be commenced until 90 days after the date notice is mailed to the borrower.

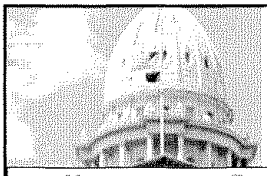
(vi) That if the borrower and the person designated under subsection (1)(c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(vii) That the borrower has the right to contact an attorney, and the telephone number of the state bar of Michigan's lawyer referral service.

(5) A borrower on whom notice is required to be served under this section who is not served and against whom foreclosure proceedings are commenced under this chapter may bring an action in the circuit court for the county in which the mortgaged property is situated to enjoin the foreclosure.

(6) If the borrower and the person designated under subsection (1)(c) have previously agreed to modify the mortgage loan under section 3205b, this section and sections 3205b and 3205c do not apply unless the borrower has complied with the terms of the mortgage loan, as modified, for 1 year after the date of the modification.

History: Add. 2009, Act 30, Eff. July 5, 2009



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Section 600.3205b

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REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

***** 600.3205b THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205b Modification of mortgage loan; negotiations; contacting housing counselor; providing documents; scheduling meeting.

Sec. 3205b.

(1) A borrower who wishes to participate in negotiations to attempt to work out a modification of a mortgage loan shall contact a housing counselor from the list provided under section 3205a within 14 days after the list is mailed to the borrower. Within 10 days after being contacted by a borrower, a housing counselor shall inform the person designated under section 3205a(1)(c) in writing of the borrower's request.

(2) After being informed of a borrower's request to meet under this section, the person designated under section 3205a(1)(c) may request the borrower to provide any documents that are necessary to determine whether the borrower is eligible for a modification under section 3205c. The borrower shall give the person designated under section 3205a(1)(c) copies of any documents requested under this section.

(3) A housing counselor contacted by a borrower under this section shall schedule a meeting between the borrower and the person designated under section 3205a(1)(c) to attempt to work out a modification of the mortgage loan. At the request of the borrower, the housing counselor will attend the meeting. The meeting and any later meetings shall be held at a time and place that is convenient to all parties, or in the county where the property is situated.

History: Add. 2009, Act 30, Eff. July 5, 2009

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Section 600.3205c

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REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

***** 600.3205c THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205c Loan modification.

Sec. 3205c.

(1) If a borrower has contacted a housing counselor under section 3205b but the process has not resulted in an agreement to modify the mortgage loan, the person designated under section 3205a(1)(c) shall work with the borrower to determine whether the borrower qualifies for a loan modification. Unless the loan is described in subsection (2) or (3), in making the determination under this subsection, the person designated under section 3205a(1)(c) shall use a loan modification program or process that includes all of the following features:

(a) The loan modification program or process targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis. Housing-related debt under this subdivision includes mortgage principal and interest, property taxes, insurance, and homeowner's fees.

(b) To reach the 38% target specified in subdivision (a), 1 or more of the following features:

(i) An interest rate reduction, as needed, subject to a floor of 3%, for a fixed term of at least 5 years.

(ii) An extension of the amortization period for the loan term, to 40 years or less from the date of the loan modification.

(iii) Deferral of some portion of the amount of the unpaid principal balance of 20% or less, until maturity, refinancing of the loan, or sale of the property.

(iv) Reduction or elimination of late fees.

(2) In making the determination under subsection (1), if the mortgage

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loan is pooled for sale to an investor that is a governmental entity, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the governmental entity.

(3) In making the determination under subsection (1), if the mortgage loan has been sold to a government-sponsored enterprise, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the government-sponsored enterprise.

(4) This section does not prohibit a loan modification on other terms or another loss mitigation strategy instead of modification if the other modification or strategy is agreed to by the borrower and the person designated under section 3205a(1)(c).

(5) The person designated under section 3205a(1)(c) shall provide the borrower with both of the following:

(a) A copy of any calculations made by the person under this section.

(b) If requested by the borrower, a copy of the program, process, or guidelines under which the determination under subsection (1) was made.

(6) Subject to subsection (7), if the results of the calculation under subsection (1) are that the borrower is eligible for a modification, the mortgage holder or mortgage servicer shall not foreclose the mortgage under this chapter but may proceed under chapter 31. If the results of the calculation under subsection (1) are that the borrower is not eligible for a modification or if subsection (7) applies, the mortgage holder or mortgage lender may foreclose the mortgage under this chapter.

(7) If the determination under subsection (1) is that the borrower is eligible for a modification, the mortgage holder or mortgage servicer may proceed to foreclose the mortgage under this chapter if both of the following apply:

(a) The person designated under section 3205a(1)(c) has in good faith offered the borrower a modification agreement prepared in accordance with the modification determination.

(b) For reasons not related to any action or inaction of the mortgage holder or mortgage servicer, the borrower has not executed and returned the modification agreement within 14 days after the borrower received the agreement.

(8) If a mortgage holder or mortgage servicer begins foreclosure proceedings under this chapter in violation of this section, the borrower may file an action in the circuit court for the county where the mortgaged property is situated to convert the foreclosure proceeding to a judicial foreclosure. If a borrower files an action under this section and the court determines that the borrower participated in the process under section 3205b, a modification agreement was not reached, and the borrower is eligible for modification under subsection (1), and subsection (7) does not apply, the court shall enjoin foreclosure of the mortgage by advertisement and order that the foreclosure proceed under chapter 31.

History: Add. 2009, Act 31, Eff. July 5, 2009

Section 600.3205d

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REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

***** 600.3205d THIS SECTION IS REPEALED BY ACT 31 OF 2009 EFFECTIVE JULY 5, 2011 *****

600.3205d Housing counselors; list.

Sec. 3205d.

The Michigan state housing development authority shall develop the list of housing counselors approved by the United States department of housing and urban development or by the Michigan state housing development authority who may perform the duties of housing counselor under sections 3205a to 3205c.

History: Add. 2009, Act 31, Eff. July 5, 2009

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Section 600.3205e

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REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.3205e Repeal of MCL 600.3205a to 600.3205d.

Sec. 3205e.

Sections 3205a to 3205d are repealed effective 2 years after the effective date of the amendatory act that added this section.

History: Add. 2009, Act 31, Eff. July 5, 2009

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NEVADA

ASSEMBLY BILL NO. 149–ASSEMBLYMEN BUCKLEY, OCEGUERA, CONKLIN, LESLIE, SMITH; AIZLEY, ANDERSON, ATKINSON, BOBZIEN, CLABORN, DENIS, DONDERO LOOP, GOICOECHEA, GRADY, HAMBRICK, HARDY, HOGAN, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, MANENDO, MASTROLUCA, MCCLAIN, MUNFORD, OHRENSCHALL, PARNELL, PIERCE, SEGERBLOM, SETTELMEYER, SPIEGEL AND STEWART

FEBRUARY 9, 2009

JOINT SPONSORS: SENATORS HORSFORD; AND COFFIN

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing foreclosures on property. (BDR 9-824)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

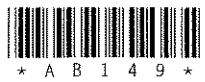
~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to real property; revising provisions governing foreclosures on property; providing for mediation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth procedures governing foreclosures on real property upon default. A trustee under a deed of trust has the power to sell the property to which the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085) This bill establishes additional restrictions on the trustee's power of sale with respect to owner-occupied housing by providing a homeowner with the right to request mediation under which he may receive a loan modification. Once a homeowner requests mediation, no further action may be taken to exercise the power of sale until the completion of the mediation. Each mediation must be conducted by a senior justice, judge, hearing master or other designee pursuant to rules adopted by the Nevada Supreme Court or an entity designated by the Nevada Supreme Court.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In addition to the requirements of NRS 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to any trust agreement to which NRS 107.085 applies and which concerns owner-occupied housing is subject to the provisions of this section.

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless the trustee includes in the notice required by subsection 2 of NRS 107.085:

(a) Contact information which the grantor may use to reach a person with authority to negotiate a loan modification on behalf of the trustee;

(b) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development; and

(c) A form upon which the grantor may indicate his election to enter into mediation or to waive mediation and one envelope addressed to the trustee and one envelope addressed to the Administrative Office of the Courts, which the grantor may use to comply with the provisions of subsection 3.

3. The grantor shall, not later than 30 days after service of the notice in the manner required by NRS 107.085, complete the form required by paragraph (c) of subsection 2 and return the form to the trustee by certified mail, return receipt requested. If the grantor indicates on the form his election to enter into mediation, the trustee shall file a copy of the form with the Administrative Office of the Courts, which shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. No further action may be taken to exercise the power of sale until the completion of the mediation. If the grantor indicates on the form his election to waive mediation or fails to return the form to the trustee as required by this paragraph, no mediation is required.

4. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 7. The trustee or his representative and the grantor or his representative shall each attend the mediation. The trustee shall bring a copy of the deed of trust and the mortgage note to the mediation. If the trustee is represented at the mediation by another person, that person must have authority to negotiate a loan modification on

behalf of the trustee or have access at all times during the mediation to a person with such authority.

5. If the trustee or his representative fails to attend the mediation, does not bring to the mediation each document required by subsection 4 or does not have the authority or access to a person with the authority required by subsection 4, the court may issue an order requiring a loan modification in the manner determined proper by the court.

6. If the grantor fails to attend the mediation, the court shall dismiss the matter and the mediation shall be deemed completed for the purposes of this section.

7. The Supreme Court or an entity designated by the Supreme Court shall adopt rules necessary to carry out the provisions of this section.

Sec. 2. NRS 107.080 is hereby amended to read as follows:

107.080 1. Except as otherwise provided in NRS 107.085, *and section 1 of this act,* if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) In the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment;

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to be sold the property to satisfy the obligation; and

(c) Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default and election to sell is recorded in the

office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor, and to the person who holds the title of record on the date the notice of default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

(a) Providing the notice to each trustor and any other person entitled to notice pursuant to this section by personal service or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;

(b) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold; and

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. A sale made pursuant to this section may be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale.

7. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

Sec. 3. NRS 459.646 is hereby amended to read as follows:

459.646 1. A person who, without participating in the management of a parcel of real property, holds or is the beneficiary of evidence of title to the property primarily to protect a security interest in the property is not a responsible party with respect to a release of a hazardous substance on the property if:

(a) The owner of the property is relieved from liability under NRS 459.610 to 459.658, inclusive, with respect to the release;

(b) The owner or holder of evidence of title did not cause the release; and

(c) The owner or holder of evidence of title does not participate actively in decisions concerning hazardous substances on the property.

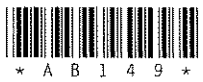
2. A lender to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 or a lender who forecloses his security interest in property pursuant to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.100, inclusive, *and section 1 of this act,* and within a reasonable period after the foreclosure, not to exceed 2 years, sells, transfers or conveys the property to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 is not a responsible party solely as a result of:

(a) Foreclosing a security interest in the property; or

(b) Making a loan to the prospective purchaser if the loan:

(1) Is to be used for acquiring property or removing or remediating hazardous substances on property; and

(2) Is secured by the property that is to be acquired or on which is located the hazardous substances that are to be removed or remediated.

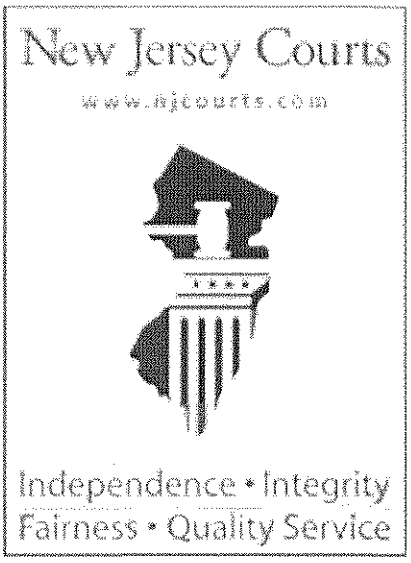


Sec. 4. This act becomes effective on July 1, 2009.

(30)

NEW JERSEY

NEW JERSEY FORECLOSURE MEDIATION



Administrative Office of the Courts
August 2009

Introduction

New Jersey faces an unprecedented increase in mortgage foreclosures. The high incidence of foreclosures has had negative financial and social effect on many of New Jersey's communities, with social dislocation, declining housing values, neighborhood blight, homelessness, and a general decline in neighborhood morale and safety.

Court-referred mediation is one important method to foster an open and effective channel of communication between homeowners and lenders. Foreclosure mediation introduces a neutral third party to assist lenders and defaulting homeowners in reaching a satisfactory resolution to their dispute.

Mediation can result in homeowner-mortgagors staying in their homes and affords lenders the opportunity to avoid foreclosure costs and carrying charges and reduce the number of non-performing loans in their portfolio.

The New Jersey Superior Court's Foreclosure Mediation Program is focused on encouraging homeowners to get professional help.

To increase the likelihood that foreclosure mediation is successful, homeowners will be required to provide financial information and documents and work with a HUD-certified housing agency. This assures that homeowners requesting mediation will arrive at the mediation session with relevant information and a viable and practicable workout plan.

Foreclosure mediation will encourage lenders and loan servicers to identify alternatives to foreclosure and to be flexible in modifying loans in such a way that will benefit homeowners while protecting investors' interests.

Description of New Jersey Judiciary's Foreclosure Mediation Program

Mediation will be available to homeowners who have filed an answer and are contesting the foreclosure as well as to homeowners who fail to make a formal appearance and whose cases are uncontested. Foreclosure mediation may be requested up to the time of the sheriff's sale.

An individual homeowner-borrower can participate in the Court's free foreclosure mediation program if the following eligibility conditions are met: (1) the property is an owner-occupied one- to three-family residential property; (2) the property is the homeowner-borrower's primary residence; (3) the homeowner-borrower is the borrower on the mortgage loan being foreclosed and (4) the homeowner-borrower is not in bankruptcy, or, if the homeowner-borrower

has filed for bankruptcy, the petition has been discharged, dismissed or the bankruptcy stay has been lifted to allow the foreclosure to proceed.

To participate in the Court's foreclosure mediation program an individual homeowner-borrower or a HUD/NJHMFA-certified housing counselor must complete and return the Foreclosure Mediation Financial Worksheet and the Mediation Request Statement (individual) or the Mediation Recommendation Statement (housing counselor) along with supporting documents.

If a non-answering homeowner returns to the court a Foreclosure Mediation Financial Worksheet and Mediation Request/Recommendation Form, mediation will be scheduled. The plaintiff can continue to proceed to finalize the action by asking for a foreclosure judgment and writ, notwithstanding a request by an answering or non-answering homeowner for mediation. However, the sheriff's sale will be stayed while mediation is pending.

When homeowners file answers, judges may order mediation as part of the case management conference.

To encourage the greatest participation, no fee will be charged for mediation.

Mediation proceedings will be held at the courthouse in the county of venue. Foreclosure mediation will be available to homeowners of one- to three-family residential properties. The property in foreclosure must be the primary residence of the homeowner and the homeowner must be the borrower.

Certain homeowners may qualify for assistance by a housing counselor certified by the Department of Housing & Urban Development (HUD) and the New Jersey Housing and Mortgage Finance Agency (NJHMFA). Qualifying homeowners will be directed to these housing counselors through a toll free number (below).

A three-step notification process will start with mortgage foreclosure actions filed on or after January 5, 2009. The notice will announce:

- Free foreclosure mediation
- Request for mediation will not stop the progress of foreclosure actions and unless an answer is filed, the plaintiff-lender will proceed to a default judgment and issuance of a writ of execution
- Qualified homeowners will be directed to HUD/NJHMFA-certified housing agencies for help to complete a financial worksheet provided with the notice
- Mediation will be scheduled when a complete foreclosure mediation financial worksheet and a mediation request/recommendation form are returned to the Administrative Office of the Courts.

- Toll Free hotline number 1-888-989-5277
- Directions to the Judiciary's Web site, njcourts.com for additional forms and information.

Homeowners in pending foreclosure actions that have not yet gone to sheriff's sale may seek mediation. When the court has entered the foreclosure judgment and the writ of execution has been issued, but the sheriff's sale has not been held, homeowners will be required to file a motion seeking an order staying the sheriff's sale and directing the case to mediation.

Volunteer mediators, who have received 18 hours of mediation training, will mediate the cases. Basic mediation training will be available for volunteer attorneys who have not received training. One day of foreclosure-specific training and workout alternatives will be required of all mediators in the program. Training is free of charge.

Notices of Mediation Availability

The first notice of the mediation program will be served with the summons and complaint. A second notice will be sent by the Administrative Office of the Courts' (AOC) Central Office to all residential homeowners 60 days after the complaint is filed. A third notice will be attached to the notice of motion for judgment.

The first and third notices will have attached a foreclosure mediation financial worksheet, individual and housing counselor instruction sheets with the mediation request/recommendation form on the reverse side.

The mediation request/recommendation form will include a certification to be signed by the homeowner that the property is his or her primary residence and he or she is not in bankruptcy. It will also include a financial disclosure authorization to permit the court to share the information with the lender or lender's servicer (through the lender's attorney) and a section where the housing agency, if the homeowner qualifies and makes use of a housing counseling agency, may recommend a possible workout solution.

Sixty days after the complaint is filed, the AOC will send a second notification about the availability of mediation for foreclosure cases. This second notice will be in the form of a large postcard.

A third notice will be sent by the plaintiff's attorney with the notice of motion for judgment and proof of amount due.

Event-Triggering Mediation

A foreclosure mediation financial worksheet and request for mediation form that are returned to the AOC's Office of Foreclosure by an individual homeowner or the housing agency on behalf of a homeowner will trigger the process of scheduling mediation. The worksheet will set out the basic biographical information about the homeowner along with assets, income and monthly expenses. Attached to the worksheet will be tax returns, pay stubs, bank statements, and any additional information pertinent to why the delinquency developed. When the court stays a sheriff's sale to permit mediation, the foreclosure mediation financial worksheet and request for mediation form will be returned to the vicinage Civil Complimentary Dispute Resolution (CDR) point person for setting an expedited mediation date.

Mediation Schedule

Vicinage staff will schedule mediation within 90 days of the receipt of the financial worksheet by the Office of Foreclosure. At least 45 days notice of the mediation date will be provided.

Mediation Logistics

Mediation will take place in county courthouses. Special needs such as interpreters or handicapped access must be communicated to the county where the mediation will occur.

AOC's Office of Foreclosure will bundle individual housing agency workout recommendations and associated financial worksheets (with attachments - tax returns, wage statements, *et cetera*). and send them to the appropriate county of venue and the plaintiffs' attorneys.

The notice of mediation will advise the plaintiff's attorney and homeowner of the date, time and location of the mediation. It will inform the homeowner that he/she may bring an attorney or a housing counselor, or both. It will inform the plaintiff's attorney that a representative of the plaintiff-lender or the lender's servicing company with authority to reach a mutually acceptable agreement must be present or available by telephone. Plaintiffs' attorneys must confer with the lender or lender's servicer in advance of the mediation session.

Court Rule Relaxation

Court rules have been relaxed to implement the foreclosure mediation program. These are:

Rule 4:4-4, to require inclusion of a brochure or notice explaining court's mediation program and attachments to be served with foreclosure complaint and summons.

Rule 4:64-1(d), to require that a final notice, advising that mediation is still available, and attachments, be served with the notice of motion for judgment and proof of amount due.

Rule 4:64-1(d), to require a certification for inclusion in judgment package that final notice advising that mediation is still available was served with the summons and complaint and the motion for judgment and proof of amount due.

Rule 4:64-4 (Abandonment of Action by Plaintiff; Right of Defendant to Proceed), to suspend the right of a subordinate encumbrancer to prosecute an abandoned foreclosure action, if the primary mortgagee agrees to a workout in mediation.

Mediator Training

Mediators must have completed a minimum 18 hours of mediation training, as required by Rule 1:40. In addition, all mediators who meet the basic mediation-training requirement will receive one-day foreclosure specific training, which will be offered at no charge by the Office of Dispute Resolution and the AOC. The AOC will also offer, at no charge, 18 hours of mediation training to attorneys who do not meet the basic mediator training requirements of *R.* 1:40.

Mediator Compensation

Mediators may be compensated if funds are appropriated by the Legislature for this purpose.

Published by the
New Jersey Judiciary
Civil Practice Division

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Chief Justice

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

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Director, Office of Trial Court Services

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Kevin M. Wolfe.
Chief, Civil Practice Liaison

Office of Communications and Community Relations
(609) 292-9580
njcourtsonline.com

(Content Last Updated 08/2009)

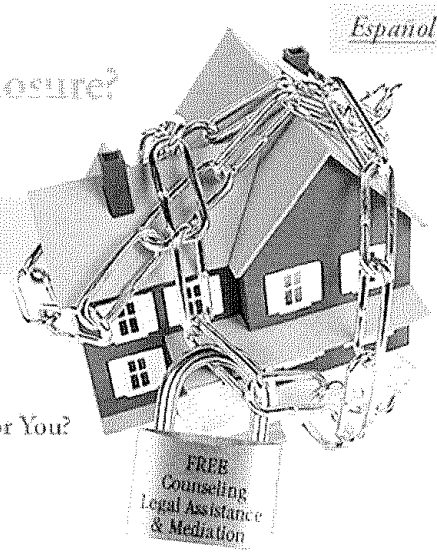
NJ JUDICIARY FORECLOSURE MEDIATION PROGRAM

Español

Is your home in foreclosure?

Help is available...

1-888-989-5277 online form



- Program Home & Details
- What is Foreclosure Mediation?
- Is Foreclosure Mediation Right for You?
- 3 Easy Steps to Sign Up
- Additional Resources
- Attorney Volunteer Form

NJ Judiciary Foreclosure Mediation Program

Providing housing counselors, lawyers, and mediators to homeowners facing foreclosure.

Call Toll Free: 1-888-989-5277
The Foreclosure Mediation Hotline is open from 8 a.m. to 6 p.m. Monday through Friday.

If the hotline is busy due to heavy call volume, visit **www.lsnjlaw.org/foreclosure** and complete the online form. Someone will get back to you as soon as they can. All submissions are responded to in the order they are received.

Quiero llenar la encuesta sobre la ejecución hipotecaria en español.

New Jersey Courts
Independence • Integrity
Fairness • Quality Service

Don't delay any longer, help is available.

A partnership of The Judiciary, the Office of the Attorney General, the Housing & Mortgage Finance Agency, Legal Services of New Jersey, the Office of the Public Advocate and, the Department of Banking and Insurance.

Site maintained by NJOAG - technical inquiries only: email

NJ JUDICIARY FORECLOSURE MEDIATION PROGRAM

Español

Is your home in foreclosure?

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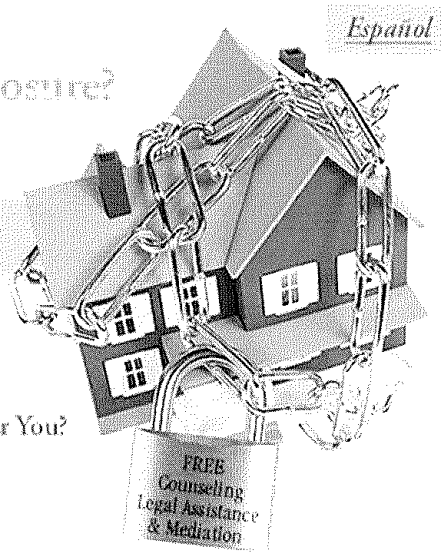
1-888-989-5277 *online form*



What Is Foreclosure Mediation?

Foreclosure mediation is an opportunity for qualified homeowners who are facing foreclosure to receive help from housing counselors, attorneys, and a neutral mediator to resolve a loan delinquency.

The program aims to assist homeowners avoid foreclosure by proposing work-out and payment arrangements that balance the interests of the borrower and lender.

The program is free. Mediators are ready to encourage every participant and mortgage lender to reach an amicable result.

New Jersey Courts

Independence • Integrity
Fairness • Quality Service

Mediation is Available

Mediation is available whether or not you dispute your lender's right to forclosure.

Read Your Mail!

The Court will mail you important information about your case. You must respond to notices from the Court, even if you participate in mediation.

NJ JUDICIARY FORECLOSURE MEDIATION PROGRAM

Español

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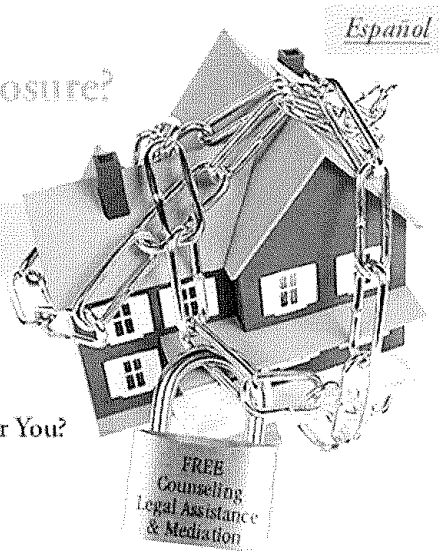

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What Is Foreclosure Mediation?

New Jersey Courts

Independence • Integrity
Fairness • Quality Service

HUD Certified Housing Counselors: Counselors will be sensitive to your financial status and recommend a loan work-out that is affordable.

Legal Representation: Attorneys are available to help income-eligible participants review documents, negotiate with the lender, and attend the mediation.

Experienced Neutral Mediators: Free mediation is available to homeowners facing foreclosure. The mediator will assist you and the lender to reach a voluntary and amicable solution.

Thousands of New Jersey residents face foreclosure every year.

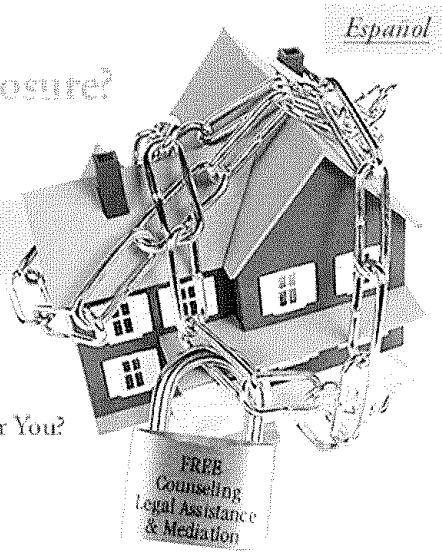
NJ JUDICIARY FORECLOSURE MEDIATION PROGRAM

Espanol

Is your home in foreclosure?

Help is available...

1-888-989-5277 online form



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3 Easy Steps to Sign Up for the FREE Judiciary Foreclosure Mediation Program:

Step One

Call the toll free hotline: 1-888-989-5277 online form

Step Two

Speak to one of the representatives about eligibility for free mediation.

Criteria include:

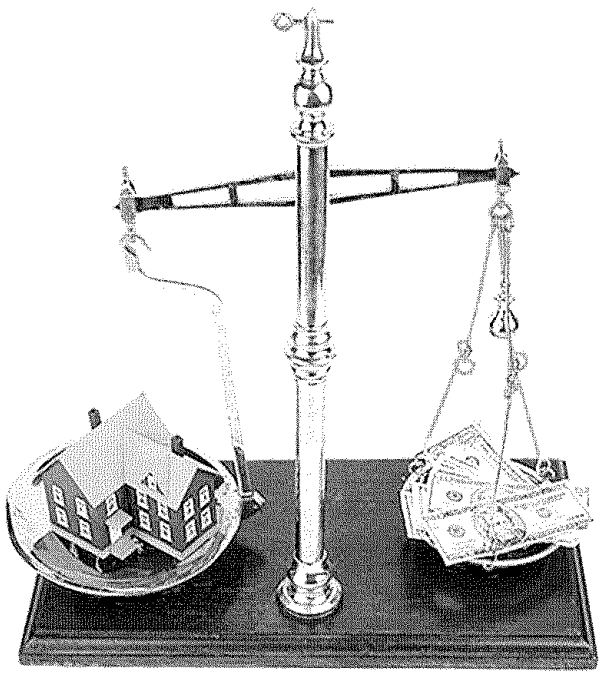
- The property is a 1 to 3 family residential property.
- The home is your primary residence.
- The homeowner is the borrower.

Note to Homeowners in Bankruptcy
The United States Bankruptcy Court for the District of New Jersey has issued an order that mortgagees and debtors with pending bankruptcy cases who meet the qualifying conditions of the Foreclosure Mediation Program ***may now participate in the program****. Previously, borrowers with pending bankruptcy cases needed to finish bankruptcy proceedings or obtain from a bankruptcy judge a lifting of the stay on state-court proceedings. This bar has been lifted, so borrowers in bankruptcy may now participate in the mediation program without restriction.*

Step Three

If you are eligible, contact and visit the HUD certified counslor you are referred to, who will help you complete and return the registration documents on time.

That's it! You're ready to participate in mediation!



A partnership of The Judiciary, the Office of the Attorney General, the Housing & Mortgage Finance Agency, Legal Services of New Jersey, the Office of the Public Advocate and, the Department of Banking and Insurance.

NJ JUDICIARY FORECLOSURE MEDIATION PROGRAM

Español

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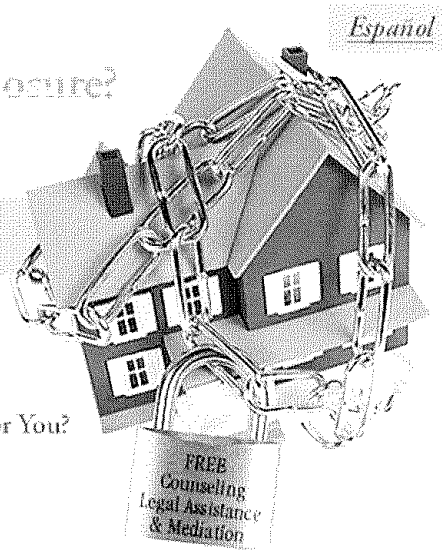

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Additional Resources

- **Foreclosure Mediation Information and Forms**
  - Foreclosure Mediation FAQ
  - Foreclosure Mediation Program Description
- **Foreclosure Fast Facts** (pdf)
- **Generalidades Sobre Ejecuciones Hipotecarias** (pdf)
- **Housing Resource Center** (www.njhousing.com), a resource for people who are looking for housing. Access information about available for sale and rental housing throughout the state for free. This is an important tool for those people who do end up having to move out of their current residence. The Housing Resource Center is administered by the NJ Housing & Mortgage Finance Agency (HMFA).
- **Making Home Affordable Program** (Federal) to help keep your home out of foreclosure
- **NJHOPE** - New Jersey Home Ownership Preservation Effort
- **Warning Regarding Mortgage Loan Modification Activity**
- **Mortgage Fraud & Scam Information**
- **Homeownership Preservation Foundation** - If your lender cannot help you, contact the Homeownership Preservation Foundation at 1-888-995-HOPE, a 24 hour a day, 7 day a week toll-free hotline with trained counselors to help homeowners avoid foreclosure. When you talk to a counselor you won't be judged and you won't pay a dime for the advice or assistance. Call 1-888-995-HOPE or visit www.995hope.org today.
- **Glossary** of Mortgage Terms

New Jersey Courts
www.njcourts.com
Independence • Integrity
Fairness • Quality Service

Foreclosure Mediation Awareness Materials

- Brochure (8.5"x11" tri-fold) English | Español 3MB pdf
- Mini Poster (8.5"x11") pdf
- Large Poster (11"x17") pdf

NJ JUDICIARY FORECLOSURE MEDIATION PROGRAM

Español

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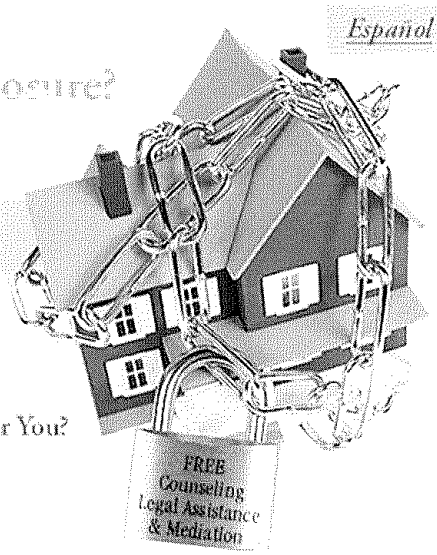

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NJ Judiciary Foreclosure Mediation Program

Attorney Volunteer - Pro Bono Services Form

Please complete and submit this form if you are an attorney interested in offering pro bono foreclosure mediation services.

First Name

Last Name

Firm

Phone

Fax

County Choose County

Address

City/Town

Zip Code

Bar Association

Please provide the following information regarding your experience:

Do you have experience with foreclosure cases ○ Yes ○ No

If yes, please describe briefly

The number of cases

you would be willing to handle during 2009

Submit Reset

Thank You for Your Help

Please note this form is not encrypted. All information received will be used only to contact you and will not be shared or sold.

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

FORECLOSURE FAST FACTS

STATEWIDE FORECLOSURE PREVENTION RESOURCES

Homeowners

The Office of the Courts Foreclosure Mediation Program provides homeowners with access to housing counselors and court trained mediators to resolve foreclosure actions by proposing work-out and payment arrangements between distressed borrowers and lenders. The program will also provide lawyers to income-eligible homeowners. Call **888-989-5277** to sign up or visit **www.njforeclosuremediation.org**

The New Jersey HOUSING COUNSELING AGENCIES listed in this brochure have been trained in foreclosure prevention counseling. Residents can call directly to receive assistance.

The Mortgage Assistance Program provides funding to homeowners to bring mortgages current or to refinance or renegotiate the terms of the mortgage. Homeowners must work with a counseling agency listed in the brochure to determine eligibility.

Anti-Predatory Lending If you feel you have been taken advantage of or misled by a lender, call Legal Services of New Jersey at **888-576-5529**. Legal Services of NJ provides legal representation to low-income New Jersey homeowners. Homeowners regardless of income level may file a complaint with the NJ Department of Banking and Insurance by calling **800-446-7467**.

The Hope Hotline 1-888-995-HOPE offers free, confidential help and assistance to homeowners with mortgage problems 24 hours a day / 7 days a week in English and Spanish.

Renters

You cannot be evicted without notice and without good cause. This is true even when a bank or mortgage lender files an action to foreclose on your rented property because your landlord has not paid the mortgage. If you find yourself facing eviction, call a lawyer. If you cannot afford a lawyer, you may be eligible for Legal Services. Find out by calling **888-576-5529**.

If you have any questions, please call the Public Advocate at 609-826-5070.

If you have been locked out of your home, call the Police Department in your municipality. Remember, the landlord or property owner must take you to court before you can be removed from your home.

Housing Resource Center (HRC)

Provides a statewide listing of vacant for sale and rental properties.

Visit **www.njhousing.gov** to search thousands of affordable units. HRC is free and anonymous. Vacancy information is updated biweekly.

(Continued Inside...)

FORECLOSURE FAST FACTS

STATEWIDE FORECLOSURE PREVENTION RESOURCES

Young People

The loss of a home affects every member of the family not just the adults. Governor Corzine recently launched the 2nd FLOOR Youth Toll-Free Helpline which lets young New Jerseyans between 10 and 24 years of age call and talk about whatever is on their mind. To speak to a counselor, call **888-222-2228**. Parental permission is not needed and all calls are confidential and anonymous.

Women

Women's Referral Central The Hotline provides referrals and basic information in areas such as discrimination, affordable housing, addiction services, domestic violence, employment, legal assistance. Please call **800-322-8092** for further information.

Veterans

Counseling Hotline 866-838-7654

Seniors

Reverse Mortgage Program A Reverse Mortgage is a special type of mortgage that allows homeowners, age 62 or over, to tap into the equity in their existing homes, or to purchase a new home. The Reverse Mortgage requires no repayment until the borrower leaves the home. For more information, call **1-800-NJ-HOUSE** or **visit http://www.state.nj.us/dca/hmfa/consu/senior/revers/**

Homelessness Prevention

NJ Homelessness Prevention Program provides limited financial assistance to low- and moderate-income tenants and homeowners in imminent danger of eviction or foreclosure due to temporary financial problems beyond their control. Funds are used to disburse payments in the forms of loans and grants to landlords and mortgage companies. Please call toll-free **866-889-6270.**

Home Heating Assistance

NJ SHARES New Jersey Statewide Heating Assistance and Referral for Energy Services (New Jersey SHARES) is a non-profit organization charged with a mission to provide assistance to individuals and families living in New Jersey who are in need of temporary help in paying their energy bills. Call **1-866-NJSHARES** or visit **http://www.njshares.org/whereToApply/index.asp** to find out how to apply.

The Universal Service Fund (USF) is a program created by the State of New Jersey to help make natural gas and electric bills more affordable for low-income households. If you are eligible,

For further information USF or to locate the nearest application agency, call **800-510-3102** or **609-292-6140**. Additional information about USF, including an application, is also available at **www.energyassistance.nj.gov**.

NJ Weatherization Program Assists elderly, handicapped and low-income persons in weatherizing their homes, improving their heating system efficiency and conserving energy. Call **609-633-2378** or visit **www.state.nj.us/dca/dcr/forms/wealist.doc** to find a service provider near you.

General Assistance

General Assistance - Call 211. Call Specialists will provide information and referral for services including:

Basic Human Needs Resources food banks, rent assistance, utility assistance

Seniors and Persons with Disabilities congregate meals, Meals on Wheels, adult daycare and transportation

Children, Youth and Families childcare, after school programs, mentoring, protective services, tutoring

Employment Supports financial assistance, job training

New Jersey Self-Help Clearinghouse

Self-help groups can connect you with others who truly understand. NJ Self-Help Clearinghouse has information on over 4,500 self-help groups for addictions, abuse, health, loss, mental health, disabilities, family and parenting concerns. Services are free and confidential. **(800) 367-6274** or **(800) 238-2333**.

NJHELPS

Is a one stop resource for state programs to assist residents of New Jersey.

Visit **www.njhelps.org** to self-screen in English or Spanish for over 28 programs such as food stamps, prescription drug assistance, Work First New Jersey, assisted living, and more. NJHELPS also lists over 30 hotline resources for child care, child support, support for working families and more.

Statewide Hotlines

Domestic Abuse Hotline	1-800-572-7233
Addiction Hotline	1-800-322-5525
Substance Abuse Hotline	1-609-292-5760
Food Stamp Info Line	1-800-687-9512 or online application available at http://www.njhelps.org

1-800-446-7467 | www.njhope.nj.gov **1-800-NJ-HOUSE | www.nj-hmfa.com**

FORECLOSURE FAST FACTS

STATEWIDE FORECLOSURE PREVENTION RESOURCES

HOUSING COUNSELING AGENCIES

The following is a list of agencies that have partnered with the NJ HMFA and have been trained in foreclosure prevention. If you need help with your mortgage, call a counseling agency that operates in the county where you live. Unless otherwise noted, all of the following agencies participate in the Foreclosure Mediation Program.

ATLANTIC COUNTY

AHOME
400 East Main Street
Millville NJ 08332
856-293-0100

Atlantic Human Resources
1 South NY Ave, Suite 303
Atlantic City, NJ 08401
609-348-4131 ext. 222

Consumer Credit
and Budget Counseling
299 South Shore Road
U.S. Route 9 South
P.O. Box 666
Marmora, NJ 08223
609-390-9652 ext. 207

BERGEN COUNTY

Episcopal Community
Development
31 Mulberry Street
Newark, NJ 07102
973-430-9986

BURLINGTON COUNTY

AHOME
856-293-0100

American Credit Alliance, Inc.
800-501-7526

Burlington County
Community Action Program
One Van Sciver Parkway
Willingboro, NJ 08046
609-835-4329

CCCS of Delaware Valley
One Cherry Hill Dr. Suite 215
Cherry Hill, NJ 08002
800-989-2227

Jersey Counseling*
1940 South Broadway
Camden, NJ 08104
856-541-1000

CAMDEN COUNTY

AHOME
856-293-0100

American Credit Alliance, Inc.
800-501-7526

CCCS of Delaware Valley
800-989-2227

Jersey Counseling*
856-541-1000

NJ Citizen Action
800-656-9637
973-643-8800

Tri-County Community
Action Agency
856-451-6330 ext. 222
or 299

CAPE MAY COUNTY

AHOME
856-293-0100

Atlantic Human Resources
609-348-4131 ext. 222

Consumer Credit
and Budget Counseling
609-390-9652 ext. 207

CUMBERLAND COUNTY

AHOME
856-293-0100

CCCS of Delaware Valley
800-989-2227

Consumer Credit
and Budget Counseling
609-390-9652 ext. 207

Jersey Counseling*
856-541-1000

Tri-County Community
Action Agency
110 Cohanzey Street
Bridgeton, NJ 08302
856-451-6330 ext. 222
or 299

ESSEX COUNTY

Board New Life
908-282-0781 ext. 109

Episcopal Community
Development
973-430-9986

La Casa de Don Pedro
317 Roseville Ave
Newark, NJ 07107
973-485-0701

NJ Citizen Action
744 Broad Street, Suite 2080
Newark, NJ 07102
800-656-9637
973-643-8800

Tri City Peoples Corporation
55 Washington Street
East Orange, NJ 07017
973-676-5506
800-860-0566

GLOUCESTER COUNTY

AHOME
856-293-0100

CCCS of Delaware Valley
800-989-2227

Jersey Counseling*
856-541-1000

Tri County Community
Action Agency
856-451-6330 ext. 222 or
299

HUDSON COUNTY

Episcopal Community
Development
973-430-9986

HUNTERDON COUNTY

NJ Citizen Action
800-656-9637
973-643-8800

MERCER COUNTY

Affordable Housing
Alliance of NJ
732-389-2958

American Credit Alliance, Inc.
28 Warren Street
Trenton, NJ 08608
800-501-7526

CCCS of Delaware Valley
800-989-2227

Isles Inc.
714 South Clinton Ave
Trenton, NJ 08611
609-341-4789

Novadebt
732-409-6281

MIDDLESEX COUNTY

Fadi Fellowship CDC
2707 Main Street
Sayreville, NJ 08872
732-727-9500 ext. 4149 or 1704

First Baptist CDC
732-247-0444 ext. 1016

NJ Citizen Action
75 Raritan Avenue
Highland Park, NJ 08904
800-656-9637
973-643-8800

Novadebt
732-409-6281

Puerto Rican Action Board
90 Jersey Avenue
New Brunswick, NJ 08903
732-249-9700 Ext. 150
or 154

MONMOUTH COUNTY

Affordable Housing
Alliance of NJ
59 Broad Street
Eatontown, NJ 07724
732-389-2958

Faith Fellowship CDC
732-727-9500 ext. 4149 or
1704

Novadebt
225 Willowbrook Road
Freehold, NJ 07726
732-409-6281

MORRIS COUNTY

Episcopal Community
Development
973-430-9986

Urban League
of Morris County
300 Madison Avenue, Suite A
Morristown, NJ 07960
973-539-2121

OCEAN COUNTY

Affordable Housing
Alliance of NJ
732-389-2958

Novadebt
732-409-6281

O.C.E.A.N. Inc.
40 Washington Street
Toms River, NJ 08753
732-244-2351 ext. 14

PASSAIC COUNTY

Episcopal Community
Development
973-430-9986

(Continued on back...)

1-800-446-7467 | www.njhope.nj.gov **1-800-NJ-HOUSE | www.nj-hmfa.com**

* Jersey Counseling and Affordable Housing Alliance are not participating in the Foreclosure Mediation Program.

NJ Citizen Action
800-656-9637
973-643-8800

SALEM COUNTY

ARCHE
856-293-0100

UCCS of Delaware Valley
203 E. Broadway, Suite 1020
Salem, NJ 08079
800-989-2227

Jersey Counseling*
856-541-1000

Tri County Community Action Agency
856-451-6330 ext. 222 or 299

SOMERSET COUNTY

Faith Fellowship CDC
732-727-9500 ext. 4149 or 1704

First Baptist CDC
600 Franklin Blvd., Suite 102
Somerset, NJ 08873
732-247-0444 ext. 1016

Navadeb
732-409-6281

Puerto Rican Action Board
732-249-9700
ext. 150 or 154

SUSSEX COUNTY

Urban League of Morris County
973-539-2121

UNION COUNTY

NJ Citizen Action
800-656-9637
973-643-8800

Brand New Day
176 First Street
Elizabeth, NJ 07206
908-282-0781 ext. 109

Faith Fellowship CDC
732-727-9500 ext. 4149 or 1704

'81 Day Practice Corporation
973-676-5506
800-860-0566

WARREN COUNTY

Urban League of Morris County
973-539-2121

The following is a list of county social services agencies where you will be able to access services such as Medicaid, Food Stamps, Child Support, emergency assistance and employment support.

Atlantic County
P.O. Box 869, 1333 Atlantic Ave
Atlantic City, NJ 08401
609-348-3001

Bergen County
216 Route 17 North
Rochelle Park, NJ 07662
201-368-4200

Burlington County
795 Woodlane Road
Mount Holly, NJ 08060
609-261-1000

Camden County
600 Market Street
Camden, NJ 08102
856-225-8800

Cape May County
4005 Route 9 South
Rio Grande, NJ 08242
609-886-6200

Cumberland County
275 N. Delsea Drive, 1st Floor
Vineland, NJ 08360
856-691-4600

Essex County
18 Rector St, 9th Floor
Newark, NJ 07102
973-733-3000

Gloucester County
400 Hollydell Dr.
Sewell, NJ 08080
856-582-9200

Hudson County
2 Enos Place
Jersey City, NJ 07306
201-420-3000 or 201-420-3172

Hunterdon County
6 Gaunt Place
Flemington, NJ 08822
908-788-1300

Mercer County
200 Wolverton St., P.O. Box 01450
Trenton, NJ 08650
609-989-4320

Middlesex County
181 How Lane , P.O. Box 909
New Brunswick, NJ 08903
732-745-3500

Monmouth County
Kozloski Road, P.O. Box 3000
Freehold, NJ 07729
732-431-6000

Morris County
340 W. Hanover, P.O. Box 900
Morristown, NJ 07963
973-326-7800

Ocean County
1027 Hooper Ave., P.O. Box 547
Toms River, NJ 08754
732-349-1500

Passaic County
80 Hamilton Street
Paterson, NJ 07505-2000
973-881-0100

Salem County
147 S. Virginia Avenue
Penns Grove, NJ 08069
856-299-7200

Somerset County
75 E. High Street, P.O. Box 936
Somerville, NJ 08876
908-526-8800

Sussex County
16 Church Street, P.O. Box 218
Newton, NJ 07860
973-383-3600

Union County
342 Westminster Avenue
Elizabeth, NJ 07208
908-965-2700 *or*
200 West 2nd Street
Plainfield, NJ 07060
908 - 791-7000

Warren County Courthouse Annex
Second and Hardwick Streets, 501 Second Street
Belvidere, NJ 07823
908-475-6301

BEWARE OF FORECLOSURE RESCUE SCAMS - HELP IS FREE!

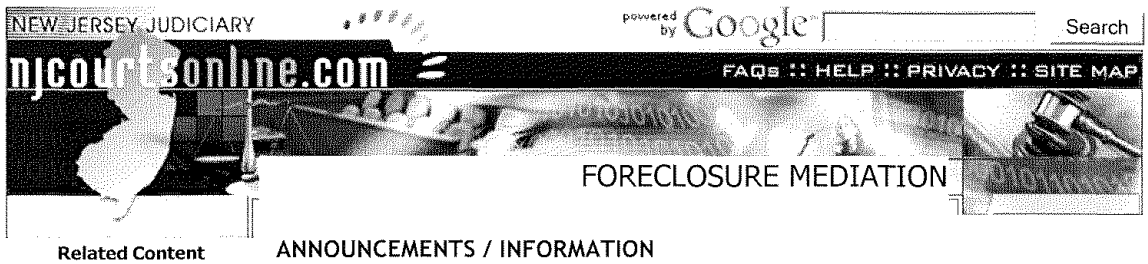
- There is never a fee to get assistance or information about Making Home Affordable from your lender or a HUD-approved housing counselor or a NJ Housing Counseling Agency listed in this document.
- Beware of any person or organization that asks you to pay a fee in exchange for housing counseling services or modification of a delinquent loan. Do not pay – walk away!
- Beware of anyone who says they can "save" your home if you sign or transfer over the deed to your house. Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt.
- Never make your mortgage payments to anyone other than your mortgage company without their approval.

The Attorney General urges any member of the public who has been a victim of mortgage-related fraud to report it by calling the Division of Consumer Affairs' toll-free hotline at 1-800-242-5846. Consumers from out of state can call 973-504-6200. Those seeking to file a complaint can also visit the Division's Web site at www.njconsumeraffairs.gov.

1-800-446-7467 | www.njhope.nj.gov **1-800-NJ-HOUSE | www.nj-hmfa.com**

Revised 05-25-2004

* Jersey Counseling and Affordable Housing Alliance are not participating in the Foreclosure Mediation Program.



Related Content

- Civil Home
- **Foreclosure Mediation Home**
- Foreclosure
- Adjournment Policy
- Foreclosure and Renters
- Foreclosure FAQ
- Foreclosure Mediation FAQ
- Foreclosure Mediation Forms
- Foreclosure Mediation Program Description
- Foreclosure Mediator Rosters
- New Jersey Foreclosure Prevention Resources
- Press Releases and Notices
- Surplus Money Application

ANNOUNCEMENTS / INFORMATION

Important Foreclosure Mediation Forms for Homeowners
Additional Civil Division forms are available on the Legal Practice Forms page.

Catalog Number (CN)	Form, Kit, or Brochure Title Título del formulario, documento o folleto	PDF
11268	HUD/NJHMFA Certified Housing Counselor Instructions - Mediation Recommendations	
11269	Foreclosure Mediation Financial Worksheet	
11270	Borrower Instructions Mediation Request	
	Español Instrucciones para prestatarios que solicitan la mediación	
11275	Mediation Request Instructions - Sheriff Sale Stay	
	Español Instrucciones para la mediación en ejecuciones hipotecarias	
11277	Notice of Motion to Stay Sheriff's Sale and Referral to Mediation	
	Español Instrucciones para el aviso de un pedimento para la suspensión de la venta judicial y la solicitud de mediación	
11284	Notice of Foreclosure Mediation Availability	
	Español Aviso! Hay mediación a su disposición en ejecuciones hipotecarias	

Foreclosure Mediation training was given from November, 2008 through May 6, 2009.
No additional training is scheduled.

Homeowners in Bankruptcy
The New Jersey federal bankruptcy court has promulgated an order establishing that participation in the New Jersey Judiciary's Foreclosure Mediation Program by mortgagees and debtors with pending bankruptcy cases who meet the qualifying conditions of the Foreclosure Mediation Program shall not be deemed violative of the automatic stay. Therefore, immediately, this condition for participation in the New Jersey foreclosure mediation program is rescinded.

HUD/NJHMFA-Certified Housing Counselors
Housing counselors are FREE and are assigned through the toll-free number 888-989-5277. If the hotline is busy due to heavy call volume, homeowners may visit www.lsnjlaw.org/foreclosure and complete the online form or homeowners can contact an approved agency directly. Homeowners can also access the list of HUD/NJHMFA-certified counseling agencies at the New Jersey Housing and Mortgage Finance Agency web site. The counseling agencies are listed by county.

Homeowners who have previously requested mediation on their own are urged to contact a HUD/NJHMFA-certified housing counselor.

The time to complete a foreclosure action and schedule a sheriff's sale is approximately ten to twelve months. Therefore, in most cases, ample time is available to schedule a first conference with the HUD/NJHMFA-certified housing counselor. Lenders report that complete and up to date financial information is critical to their ability to consider a loan modification. Homeowners are urged to use any pre-conference time to assemble income, expense and asset information so a complete financial package can be assembled by a housing counselor on your behalf.

Rescue Scams
Companies that promise to help you get a loan modification or to rescue your home from foreclosure are popping up all over New Jersey. You need to protect yourself and your home from scam companies that have no regard for you and your home.

You need to carefully check the company's credentials, reputation, and experience, watch out for warning signs of a scam. Companies may falsely claim to be affiliated with a non-profit or government entity or

endorsed by government officials. You should maintain personal contact with your lender and mortgage servicer. Your mortgage lender can help you find real options to avoid foreclosure. You should use the FREE HUD/NJHMFA-certified housing counselor accessible above. More information including tips to avoid foreclosure scams are outlined in the Public Announcement released by the Federal Reserve.

HUD/NJHMFA-CERTIFIED HOUSING COUNSELOR INSTRUCTIONS

Court-sponsored foreclosure mediation is limited to homeowners whose principal residence (1 to 3 family) is the subject of a foreclosure action. The homeowner must be the borrower.

After meeting with and counseling the homeowner, please complete the Foreclosure Mediation Financial Worksheet and the reverse side of these instructions, following the instructions below, and return to:

Office of Foreclosure
ATTN: Foreclosure Mediation Program
P.O. 971
25 Market Street
Trenton, New Jersey 08625

1. Complete the **Foreclosure Mediation Financial Worksheet** and assemble the required attachments.

2. Discuss with the homeowner possible workout solutions.

3. Complete the **Mediation Recommendation Statement** on the reverse side of this instruction sheet.

   Regardless of the outcome of your counseling:

   - Fill in the plaintiff's name and the name of the first named defendant from the foreclosure complaint.
   - Insert the docket number and two-digit year in the space provided from the foreclosure complaint.
   - Complete the Housing Agency Information at the bottom of the page.
   - Have homeowner(s) execute the certification, if all statements are accurate and truthful.
   - Briefly describe the workout solution or solutions that appear to fit the homeowners' circumstances.
   - insert the name of the lender's loss mitigation representative with whom a mortgage workout plan was discussed and his/her location and telephone number
   - Attach the completed Financial Worksheet and all required attachments to the Mediation Recommendation Statement.

4. Mail the **ORIGINAL** and **TWO COPIES** of the **Mediation Recommendation Statement** with the borrower's certification and the **ORIGINAL** and **TWO COPIES** of the **Foreclosure Mediation Financial Worksheet** with **THREE COPIES** of all required **attachments** affixed to the worksheets to the Office of Foreclosure at the above address.

MEDIATION RECOMMENDATION STATEMENT

DOCKET NO: F _____

Plaintiff's Name V. First Defendant's Name

MEDIATION REQUESTED

Homeowner-Borrower(s) request court sponsored foreclosure mediation.

HOMEOWNER-BORROWER'S CERTIFICATION

_____ hereby certifies and says:
[insert your name(s)]

1. I / We am/are the owner and mortgagor of the property subject to foreclosure in the above captioned foreclosure action, which property is known as _____, New Jersey.
[insert the property address]
2. I / We am/are the borrowers on the mortgage loan.
3. I / We live in the above-described property and the property is my/our principal residence.
4. I / We ☐ have ☐ have not filed an answer to the foreclosure complaint filed by my lender.

I / We certify that the statements made above are true. I / We am / are aware that if any of the statements made by me / us are willfully false, I / we am / are subject to punishment.

Signature	Date	Signature	Date
Type or Print Name		Type or Print Name	
Home Telephone No.		Cell Phone No.	

HOUSING COUNSELORS PROPOSAL

Briefly outline workout proposal (if necessary, attach additional pages):

If known, the lender's loss mitigation representative's name and his/her location and telephone number is:

Name and Location Telephone No.

HOUSING AGENCY INFORMATION

Agency Name	Agency Contact Name
Agency Address	Agency Telephone No.
Signature	Type or Print Name

INDIVIDUAL INSTRUCTIONS
(FOR HOMEOWNERS SEEKING MEDIATION WHO HAVE NOT MET WITH A HOUSING COUNSELOR)

Court-sponsored foreclosure mediation is limited to homeowners whose principal residence (1 to 3 family) is the subject of a foreclosure action. The homeowner must be the borrower.

Complete the Foreclosure Mediation Financial Worksheet and the reverse side of these instructions, following the instructions below, and return to:

Office of Foreclosure
ATTN: Foreclosure Mediation Program
P.O. 971
25 Market Street
Trenton, New Jersey 08625

1. Complete the **Foreclosure Mediation Financial Worksheet** and assemble the required attachments.

2. Complete the **Mediation Recommendation Statement** on the reverse side of this instruction sheet.

   - ✓ Fill in the plaintiff's name and the name of the first named defendant from the foreclosure complaint.
   - ✓ Insert the docket number and two-digit year in the space provided from the foreclosure complaint.
   - ✓ Execute the borrower's certification, if all statements are accurate and truthful;
   - ✓ Briefly describe the workout solution or solutions that you will ask the mediator to consider.
   - ✓ If known, insert the name of the lender's loss mitigation representative with whom a mortgage workout plan was discussed and his/her location and telephone number; and
   - ✓ Complete the Homeowner-Borrower's Contact Information at the bottom of the page.
   - ✓ Attach the completed Foreclosure Mediation Financial Worksheet and all required attachments to the Mediation Request Statement.

3. Mail the **ORIGINAL** and **TWO COPIES** of the **Mediation Request Statement** and the **ORIGINAL** and **TWO COPIES** of the **Foreclosure Mediation Financial Worksheet** with **THREE COPIES** of all required **attachments** affixed to the worksheets to the Office of Foreclosure at the above address.

MEDIATION REQUEST STATEMENT

DOCKET NO: F _____

Plaintiff's Name v. First Defendant's Name

☐ **SECTION A MEDIATION REQUESTED**

Homeowner-Borrower(s) request court sponsored foreclosure mediation.

HOMEOWNER-BORROWER'S CERTIFICATION

_____ hereby certifies and says:
[insert your name(s)]

1. I / We am/are the owner and mortgagor of the property subject to foreclosure in the above captioned foreclosure action, which property is known as _____, New Jersey.
[insert the property address]
2. I / We am/are the borrowers on the mortgage loan.
3. I / We live in the above-described property and the property is my/our principal residence.
4. I / We ☐ have ☐ have not filed an answer to the foreclosure complaint filed by my lender.

I / We certify that the statements made above are true. I / We am / are aware that if any of the statements made by me / us are willfully false, I / we am / are subject to punishment.

Signature	Date	Signature	Date
(Type or Print Name)		(Type or Print Name)	

HOMEOWNER'S FORECLOSURE PREVENTION PROPOSAL

Briefly outline the workout proposal you are seeking (if necessary, attach additional pages):

If known, the lender's loss mitigation representative's name and his/her location and telephone number is:

HOMEOWNER CONTACT INFORMATION

Name	
Address	
Home Telephone	Cell Phone

Stay of Sheriff's Sale and Mediation Request Notice of Motion Instructions

These instructions are for use after you have exhausted the two statutory stays that you may request from the sheriff. *N.J.S.A.* 2A:17-36.

You must file a WRITTEN request with the Chancery Division, General Equity in the vicinage (county) in which your property is located in order for the court to consider a stay of a sheriff's sale. Contact the Civil Division in your county to find out where to do this. Civil Division contact information is posted on the Judiciary's website under Forms and Kits for Pro Se Litigants at: www.njcourts.com. It is important that you request a stay as soon as possible after the sheriff stays are exhausted.

Following are instructions to complete the attached sample notice of motion, certification in support and form of order:

Step 1 - Complete the Notice of Motion

In the Notice of Motion, you inform the court and all parties that you have asked for a specific ruling or order and you specify the ruling you want – stay of the sheriff's sale to allow a foreclosure mediation session.

Motions are heard in court on specified days. You can obtain the motion schedule from the clerk's office (see link above). If the sheriff's sale is not imminent, you should pick a motion day at least 3 weeks from the date you mail your motion papers in order to give your adversary the 16 days before the return date as required by the court rules.

If the sheriff's sale is imminent, contact the Judge's chambers to ask when he or she can hear your motion and how he or she wants you to communicate to the lender's attorney that you are making the motion on short notice.

Step 2 - Complete the Certification in Support of the Motion and the Certification of Service

The certification in support of the motion tells the court the reasons why you want the ruling you have requested and the reasons why the court should grant your request. You must also complete the certification of service that tells the court the date on which you mailed (or delivered) the copies of the documents to the lender's attorney.

Step 3 - Complete the Proposed Form of Order

Fill in the information up to the line for the date of the order. Leave the date and the rest of the form blank. The judge will complete the terms of the Order when the motion is decided.

Step 4 - Attach the Filing Fee

The fee for filing a motion in Superior Court is $30. Write a check in that amount payable to the *Treasurer, State of New Jersey.*

Step 5 - Mail (or Deliver) the Notice of Motion, Certification and Proposed Form of Order to the Lender's Attorney

You must serve the lender's attorney no later than 16 days before the specified return date on your notice of motion. While the court rules do not require you to use certified mail, it is suggested that you send your motion and supporting papers by regular and certified mail, return receipt requested. You will then have the green card when it is returned to you as proof of service.

If the sheriff's sale is imminent and you must be heard before 16 days, deliver the motion, certification and order by hand, courier or overnight letter directly to the General Equity judge's chambers.

Step 6 - Mail or Deliver the Forms to the Court

You may deliver your papers to the court in person or you may mail them. If the sheriff's sale is imminent, delivery is, in all likelihood, required. The court address is available on line at www.njcourts.com. If you mail the papers, we recommend that you use certified mail, return receipt requested. Mail or deliver the original Notice of Motion, Certification and proposed form of Order to the court. Include a check for the $30 filing fee.

If you wish the court to send you back a copy of these papers stamped "filed", you must include an additional copy and a self-addressed, stamped envelope. Keep copies of all papers you provide to the court or any other party. Make and keep for yourself copies of all completed forms and any canceled checks, money orders, receipts, bills, contract estimates, letters, leases, photographs and other important papers that relate to your case.

Step 7 - Appear in Court

On the scheduled motion date, appear before the General Equity judge and make your case for a stay of the sheriff's sale.

Name

Address

Telephone Number

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION _____ COUNTY
GENERAL EQUITY

Docket No **F-** _____

Plaintiff,

v.

_____ ,*et al*

Defendant.

CIVIL ACTION

Notice of Motion To Stay Sheriff's Sale and Referral To Mediation

TO: _____
(Plaintiff's Attorney Name and Address)

General Equity Clerk

(Courthouse Address)

PLEASE TAKE NOTICE that on Friday, _____, 20___, at 9:00 o'clock in the forenoon, or as soon thereafter as I/we (or my/our counsel) may be heard, the undersigned,

_____ shall apply before the Superior Court of
[insert your name(s)]
New Jersey, Chancery Division, General Equity, at the County Court House for an order (a) staying the sheriff's sale, (b) directing court associated foreclosure mediation and (c) such other relief as the Court may deem equitable and just.

PLEASE TAKE FURTHER NOTICE that in support of the motion attached hereto is my/our certification.

Oral argument is requested.

Date: _____ _____
Type or Print Defendant's Name

Date: _____ _____
Type or Print Defendant's Name

Proof of Mailing

A copy of the notice of motion, certification in support and proposed form of order was mailed or served on the:

General Equity Clerk for _____ County; and

Plaintiff's Attorney (at the above stated address).

I / We certify that the above statements made by me / us are true. I / We am / are aware that if any of the statements made by me/us are willfully false, I / we am / are subject to punishment.

Date: _____ _____
Type or Print Defendant's Name

Date: _____ _____
Type or Print Defendant's Name

Language Interpreter

If oral argument is scheduled and an interpreter is required.

I / We need an interpreter for the _____ language to be present at the hearing.
(insert name of language)

Name

Address

Telephone Number

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION _____ COUNTY
GENERAL EQUITY
Docket No **F-** _____

_____
Plaintiff,
v.
_____ ,*et al*
Defendant.

CIVIL ACTION

Certification In Support of Stay of Sheriff's Sale and Referral To Mediation

_____ hereby certifies and says:
[insert your name(s)]

1. I / We am / are the owner(s) of property known as _____ , New Jersey.
(insert property address)

2. I / We am / are the borrower(s) and mortgagor(s) on a loan secured by a mortgage on the above-described property, which is the subject of the above captioned foreclosure action.

3. I / We live in the above-described property and the property is my/our principal residence. The property is a one to three unit residential dwelling.

4. I / We ☐ have ☐ have not filed an answer to the foreclosure complaint filed by the plaintiff (lender).

5. A Sheriff's sale of my property is scheduled for _____ .
(insert date)

6. I / We ☐ have ☐ have not called the HUD/NJHMFA-certified housing agency referral telephone number (888-989-5277).

7. I / We ☐ have ☐ have not contacted the HUD/NJHMFA-certified housing agency for a counseling session.
If applicable:

Foreclosure mortgage counseling was held on _____ OR
(insert date)

Foreclosure mortgage counseling is scheduled for _____
(insert date)

9. The following additional information is essential for the court's consideration:

_____

_____

_____

10. I / we request that the Sheriff's Sale of the above premises, be postponed, so that I / we can take part in court arranged foreclosure mediation.

I / We certify that the statements made above are true. I / We am / are aware that if any of the statements made by me / us are willfully false, I / we am / are subject to punishment.

Date: _____ _____
Type or Print Defendant's Name

Date: _____ _____
Type or Print Defendant's Name

Name

Address

Telephone Number

Plaintiff,

v.

_____ ,*et al*

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION _____ COUNTY
GENERAL EQUITY

Docket No **F-** _____

CIVIL ACTION

Order Staying Sheriff's Sale and Directing Mediation

This matter having come before the court (on a notice of motion) (for a case management conference) and the New Jersey Supreme Court having initiated a mediation program for residential foreclosure actions and for good cause shown.

(JUDGE COMPLETES BELOW)

It is on this _____day of _____, 20____ ORDERED that:

1. The Sheriff's Sale scheduled for _____day of _____, 20____ is stayed until _____ day of _____, 20____.

   Alternative language: until further order of the court], upon the following conditions

2. The defendant-homeowner(s) shall report in writing to the below identified CDR point person on or before _____day of _____, 20____ that he/she/they have contacted a HUD/NJHMFA-certified housing counseling agency through the hotline number 888-989-5277 and advise whether the defendant-homeowner(s) are qualified for free housing counseling.

   The defendant-homeowner(s) shall complete and return an original and two copies of the Foreclosure Mediation Financial Worksheet and attachments and an original and two copies of the HUD/NJHMFA-certified housing counselor mediation statement and recommendation to the vicinage CDR point person, _____ at the_____ County Court House, _____, New Jersey on or before _____day of _____, 20____, in which case the vicinage CDR point person shall schedule a mediation session and the stay herein entered shall continue until mediation is scheduled.

3. The following provisions are applicable for all cases stayed for mediation:
   a. The plaintiff and defendant-homeowner(s) shall participate in the court associated foreclosure mediation process in good faith and with a sense of urgency.

b. The vicinage CDR point person will notify the parties of the scheduled mediation date and arrange for a mediator from the foreclosure mediator roster. Mediation shall take place in the courthouse.

c. Any party who fails to appear for a mediation session as ordered by the Court shall be subject to sanctions.

d. The defendant-homeowner(s) and the attorney for the plaintiff shall appear at the mediation. The defendant-homeowner(s) may be accompanied by an attorney or a HUD/NJHMFA-certified housing counselor, or both. The plaintiff-lender shall participate either in person or by telephone. The participant of the plaintiff-lender shall have settlement authority.

4. At the conclusion of the mediation session, the mediator shall file with the Court an appropriate mediation report concerning the mediation and, if mediation is successful, prepare a foreclosure mediation settlement memorandum to document the agreement of the parties.

5. Mediation shall be completed within _____ days.

6. Additional Relief:

_____

_____

_____

_____

_____
P.J.Ch/ J.S.C.

Plaintiff	Lender/Servicer's Mortgage Workout Telephone
Lender's Attorney	Telephone
Defendant-homeowner(s)	
Residing at	Telephone
Defendant-homeowner(s) Attorney	Telephone

NEW MEXICO

First Judicial District Court
State of New Mexico
Counties of Los Alamos, Rio Arriba, and Santa Fe

No. D-0101-CV-77-52749

IN THE MATTER OF AN ALTERNATIVE DISPUTE RESOLUTION PROGRAM PILOT PROJECT

ADMINISTRATIVE ORDER No. 2008-01

The District Judges of the First Judicial District Court hereby adopt the following order authorizing the extension for an additional year of the Alternative Dispute Resolution Program Pilot Project using settlement conferences conducted by settlement facilitators (attorneys trained in mediation techniques).

This Administrative Order may be modified by a majority of judges in a monthly judges meeting, as recorded in the meeting minutes without a need for another Administrative Order.

The foregoing order shall become effective on February 27, 2008.

James A. Hall, Chief Judge, Div. II

Barbara J. Vigil, District Judge, Div. I

Raymond Z. Ortiz, District Judge, Div. III

Michael E. Vigil, District Judge, Div. IV

Timothy L. Garcia, District Judge, Div. V

Stephen Pfeffer, District Judge, Div. VI

Daniel A. Sanchez, District Judge, Div. VII

ALTERNATIVE DISPUTE RESOLUTION PROGRAM
PILOT PROJECT

1. **Purpose.** The purpose of this judicial district's court-annexed alternative dispute resolution program is to achieve the early, fair, efficient, cost effective and informal resolution of disputes using settlement conferences conducted by qualified settlement facilitators who are attorneys trained in mediation techniques. Nothing in this order governing this program shall be construed to discourage or prohibit parties from stipulating to private alternative dispute resolution or to prohibit the right to a trial by jury.

2. **Administration.** This program shall be administered by an alternative dispute resolution program director appointed by the court. The court may appoint standing committees of judges, lawyers and others to provide guidance and assistance.

3. **Order required.** All referrals to settlement conferences require the filing of a written court order.

4. **Forms.** Where available, applicable court forms shall be used. Forms shall be created by the office of the alternative dispute resolution program director and made available to the public through that office, the office of the court clerk, and the offices of individual judges.

5. **Immunity.** Attorneys appointed by the court to serve as settlement facilitators pursuant to the rules governing this district's court-annexed alternative dispute resolution program are appointed to serve as arms of the court and as such are immune from liability for conduct within the scope of their appointment.

6. **Compromise negotiations.** Settlement conferences will be considered to be "compromise negotiations" under Rule 11-408 NMRA. This rule does not require the exclusion of any evidence otherwise discoverable or admissable merely because it was presented in the course of settlement negotiations.

7. **Application.** This order applies to all cases identified as CV (civil), PB (probate), and DM (domestic matters) as determined by the court. This order applies to any cause of action properly before the First Judicial District Court.

8. **Referrals.**

A. Notwithstanding the provisions of paragraph 7 herein, the court in its sole discretion may refer any case to settlement conference at any time whether or not the parties agree.

B. In addition, any party may file a request for referral to settlement conference at any time prior to 6 weeks before a scheduled trial.

C. On the motion of either party, the court may, for good cause shown, delay, excuse, or require participation in settlement conferences.

D. Parties may also be excused from participation in court-ordered settlement conferences by certifying to the court that they are engaged in private alternative dispute resolution arrangements.

9. **Assignment of settlement facilitator.**

A. The court's alternative dispute resolution program director will assign settlement facilitators from a list maintained by the court.

B. Parties may present to the assigned judge a stipulated order appointing any person, whether or not that person is on the list maintained by the court, as settlement facilitator.

C. Judges shall not act as settlement facilitators in their own cases.

D. Judges, in their sole discretion, may assign any person as settlement facilitator in any particular case.

10. Court's list of settlement facilitators.

A. *Qualifications of settlement facilitators on the court's list.*

1. Settlement facilitators must be attorneys who are (a) admitted to practice in New Mexico or another state, and (b) members in good standing of the bar in every state in which they are admitted.

2. Settlement facilitators may not have been disbarred, suspended, reprimanded or otherwise disciplined by any official body in any state in which they have practiced, unless the applicant has been reinstated to good standing in the bar in which he or she was so disciplined.

3. Settlement facilitators must have training and/or experience in mediation techniques. Training in mediation techniques acceptable to the court consists of, at minimum, completion of a 40-hour mediation training program. Experience acceptable to the court is participation in the court's previous, informal, alternative dispute resolution program as a settlement referee and five (5) years of experience in conducting settlement conferences as affirmed by the applicant.

4. Settlement facilitators will provide pro bono or reduced-cost services at a rate of one (1) pro bono or reduced-cost case for every five (5) paid cases, or as requested by the court and agreed to by the settlement facilitator. Settlement conferences in pro bono or reduced-cost cases may be up to four (4) hours per case, but the settlement facilitator may extend the time at his or her discretion. Settlement facilitators may also volunteer to provide pro bono or reduced-cost services more frequently. Settlement facilitators may also meet their pro bono requirement by participating in the court's Family Court Pro Se Settlement Conference Pilot Project.

B. *Application process.*

1. Any licensed attorney who meets the qualifications specified above may apply for inclusion on the court's list of settlement facilitators by

completing an application form available from the alternative dispute resolution program office.

2. Applicants who did not participate in the court's previous alternative dispute resolution program must provide written proof of training in mediation techniques acceptable to the court, such as course completion certificates.

3. Applicants who participated in the court's previous alternative dispute resolution program and who have at least five (5) years of settlement facilitation experience (not necessarily as participants in the court's previous program) are not required to have completed a 40-hour mediation course, but instead may provide three (3) letters of reference from attorneys or parties who participated in settlement conferences facilitated by the applicant. If such applicants have completed a 40-hour mediation training course, they may submit a copy of the course completion certificate in lieu of letters of reference.

C. *To maintain inclusion on the court's list.*

To maintain inclusion on the court's list, settlement facilitators shall:

1. Participate in an evaluation program and shall pay any fee associated therewith, as required by the Court.

2. Complete not less than three (3) hours of continuing education or training in mediation techniques annually, and shall provide written proof of attendance to the alternative dispute resolution program office; and

3. Maintain a majority of evaluations of "excellent", "good", or "satisfactory".

11. Payment to settlement facilitator. The court may formulate a fee schedule for payment of settlement facilitators appointed by the court through this program.

A. The fee shall be $500 for the first four (4) hours, and $150 an hour for the next four (4) hours. After eight (8) hours, the settlement facilitator may set his or her own fee, with the parties' agreement. Time spent by the

settlement facilitator, not to exceed 1 hour except in complicated cases and with the consent of the parties and their attorneys, in reviewing information provided by the parties in preparation for the settlement conference may be included in the first four hours. If the settlement facilitator includes preparation time in the four hours, the settlement facilitator shall notify the participants before the settlement conference commences how much time he or she has spent in preparation. If the settlement facilitator believes it necessary to perform additional research to prepare for the settlement conference, he or she shall notify the parties and/or their counsel and obtain their approval before performing such research. Time spent performing additional research may only be compensated if the parties have been notified and agreed to such research prior to the commencement of the research.

B. The fee shall be equally assessed to the parties, unless the parties agree to or the court orders a different division of the assessment, and paid directly by them to the settlement facilitator prior to the commencement of the settlement conference, unless the settlement facilitator has agreed in writing, prior to the settlement conference, to a different payment schedule.

C. In the event of undue hardship to a party, that party may petition the court for relief from the obligation for payment of all or part of that party's share of settlement facilitation fees within 10 days of the date the request for referral to settlement conference is filed or the referral order is entered, whichever is earlier.

D. The court shall formulate a sliding fee schedule for parties who petition for relief from payment of all or part of the fees for settlement facilitation.

E. In cases in which the parties stipulate to a settlement facilitator who is not on the court's list, they are not bound to the fee schedule set by the court.

12. Referral order. In all cases to be referred to a settlement conference, the court will complete and file a referral order and will mail or deliver endorsed copies to the settlement facilitator and all parties entitled to notice. The order may be modified only by subsequent written court order.

A. The referral order shall require the settlement conference, appoint the settlement facilitator, and set a deadline for the conference.

B. The referral order shall require the attendance of each party of record including parties represented by counsel; each counsel of record who will be trying the case; and, for each party, the person or persons with complete authority to settle the case including but not limited to insurance company representatives and guardians ad litem. This provision may be waived only by written order of the assigned judge. The court may refuse to grant a motion to waive attendance even if all parties agree to the motion.

C. The referral order shall require that not later than five (5) business days prior to the settlement conference, all parties provide the settlement facilitator with the following information as set forth in a settlement conference information form:

(1) case number and caption;

(2) brief description of the case, including legal and factual issues and procedural posture;

(3) description of the relief sought;

(4) list of all remaining discovery;

(5) list of any pending dispositive motions;

(6) estimate of costs and attorney fees through trial;

(7) the last offer made to other parties; and

(8) copies of case law, statutes, pleadings, exhibits, orders and any other information which would be helpful to the settlement facilitator.

D. Any party who files a request for referral to settlement conference shall provide a conformed copy of the request to the alternative dispute resolution program director along with addressed, stamped envelopes for all

parties entitled to notice, and shall provide a conformed copy of the request to the assigned judge.

E. Requests for referral to settlement conference shall be made only by using the forms provided by the court, without amendment or modification.

F. Any party or the settlement facilitator may file a notice of non-compliance, using the form provided by the court, to inform the assigned judge of any necessary participant's failure to comply with any provision of the referral order.

G. Upon the filing of a notice of non-compliance or upon its own motion, and after hearing, the court may impose sanctions on any of the above-described necessary parties for failure to comply with any provision of the referral order.

13. Replacement of settlement facilitator.

A. Any party or the settlement facilitator may by motion request that the settlement facilitator be replaced without explanation.

B. The requestor shall provide a conformed copy of the motion to the assigned judge, the alternative dispute resolution program director, the settlement facilitator, and all parties. The alternative dispute resolution program director's copy of the motion shall be accompanied by enough self-addressed stamped envelopes to provide notice to all parties and both settlement facilitators.

C. Upon approval of the motion, the alternative dispute resolution program director will assign a replacement settlement facilitator from the court's list.

D. Parties may also present to the assigned judge a stipulated order appointing any person, whether or not that person is on the list maintained by the court, as replacement settlement facilitator.

14. Occurrence of settlement conference.

A. Unless set by the referral order, the time(s) and place(s) of the settlement conference(s) shall be set by the settlement facilitator after consultation with the parties, within the deadline set by the court.

B. The settlement facilitator shall provide written notice to all parties confirming the time and place of the settlement conference.

C. Any party or settlement facilitator may request an extension of the deadline set by the referral order by motion directed to the assigned judge.

D. Once set, settlement conferences may be rescheduled within the original timeframe only by the settlement facilitator with written notice to the parties.

E. If the settlement conference cannot be scheduled within the time allowed by the referral order, the settlement facilitator shall notify the court in writing of the reasons why a settlement conference cannot be scheduled and shall provide a copy of the notification to each party and to the alternative dispute resolution program director.

15. Evaluation.

A. At the conclusion of each settlement conference, the settlement facilitator shall provide all the participants with instructions for evaluating the settlement facilitator's performance, as directed by the Court.

B. All the participants shall evaluate the settlement facilitator's performance in accordance with the instructions provided them within five (5) days after the conclusion of the settlement conference.

3. The participants may also complete a Participant's Questionnaire and provide it to the alternative dispute resolution program director.

16. Certification of compliance.

A. Within five (5) business days of the date of the settlement conference, the settlement facilitator shall certify to the court that all provisions

of the referral order have been complied with by completing a certificate of compliance to be filed with the clerk of the court. Endorsed copies of the certificate of compliance shall be provided to the judge and to the alternative dispute resolution program director.

B. No final order will be issued in any case which has been referred to settlement conference absent the filing of the certificate of compliance, and the court may take such other action as the court deems appropriate.

17. Complaints.

A. Any participant in a settlement conference may register a complaint for violation of these rules by writing to the alternative dispute resolution program director identifying the complaint and the rule alleged to have been violated, describing the circumstances, and specifying the requested action in response to the complaint. The writing must be signed by the complainant, and a copy of the complaint must be provided to the other participants.

B. The alternative dispute resolution program director shall review the complaint and determine whether the allegations in the complaint, if true, constitute a violation of the program rules. If the circumstances described are not a violation of the program rules, the complaint will be dismissed.

C. If the alternative dispute resolution program director determines that, if true, the allegations in the complaint constitute a violation of the program rules, the alternative dispute resolution program director will attempt to resolve the dispute informally through discussions with the participants.

D. If the alternative dispute resolution program director is unable to resolve the complaint to the satisfaction of all the participants, the complaint shall be referred to the judge designated to supervise the alternative dispute resolution program for final action.

May 2009

HOW TO USE THE COURT'S ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM TO REQUEST A REFERRAL TO SETTLEMENT CONFERENCE

1. Let the Court know you want a settlement conference. If you were referred to a settlement conference by a judge's scheduling order, you must still follow this procedure.

a. **Obtain the proper forms:** get them from the Self Help Center, the Court Clerk's Office, or from the ADR Office: call 827-5072 or email sfedcal@nmcourts.com. You can also download the forms from the Court's website http://firstdistrictcourt.com, "Forms" .

If you want the Court to assign a Settlement Facilitator from the Court's list: Obtain a Request for Referral to Settlement Conference form. Complete the form. Settlement Facilitators on the Court's list are attorneys who have mediation training and experience.

If you and the other party have agreed on a Settlement Facilitator (who may be, but is not required to be, a person on the Court's list) and just need a Referral Order, obtain a "Stipulated Request for Referral to Settlement Conference". Complete the form.

Then make enough **copies** of the Request for Referral to Settlement Conference for yourself, the judge, the ADR Office, and all the parties. Make 2 sets of self-addressed, stamped **envelopes** to provide copies of the Request and the Referral Order to all parties or their attorneys.

b. Then **file the Request in the Court Clerk's office**. The Clerk's office will keep the original. Ask the filing clerk to endorse (stamp) each of the copies.

If you can't go to the Courthouse in person, you can file by mail: mail the original and copies to the Court Clerk's Office, First Judicial District Court, P.O. Box 2268, Santa Fe, NM 87504-2268. Be sure to include stamped envelopes, one with your name and address, and one for each other party with their name and address. Include a letter asking the Court Clerk to file your Request, return endorsed copies to you and the other party by mail, and provide a copy to the ADR Office.

c. Take another endorsed copy to the ADR Office (office is downstairs in the Court Clerk's offices), along with one set of the self-addressed, stamped envelopes. You can leave it in the ADR box on the wall to the left of the Clerks' windows if no one is there to receive it from you.

d. *You must also provide copies of the Request you file to all parties.* Use the other set of envelopes to mail the Request to all parties. You must do this yourself; court employees will not mail copies of the Request to the other parties for you.

2. The ADR Office will assign a settlement facilitator, and will generate a Referral Order, which will be given to the judge's assistant along with the envelopes.

3. The judge's assistant will get the Order signed by the judge and entered in the court file, and then mail it to the Settlement Facilitator and all parties using the envelopes provided by the person who filed the Request.

4. Each party MUST **contact the Settlement Facilitator** within 10 days after entry of the Order to schedule a Settlement Conference. The Settlement Facilitator will work with all the parties to find a date that works for everyone for the settlement conference.

5. Each party must provide the information described on the **Settlement Conference Information Sheet** to the Settlement Facilitator no later than 5 business days before the date selected for the Settlement Conference. *Do not return the*

Settlement Conference Information Sheet to the ADR Office. Fill it out completely, and be as specific as you can about the issues. The more information the Settlement Facilitator has, the better he or she will be able to help you.

6. All the participants – parties *and* their attorneys - in the Settlement Conference except the Settlement Facilitator must complete a short, anonymous, confidential, **evaluation** (either on-line or by fax) of the Settlement Facilitator's performance within 5 business days after the Settlement Conference concludes. The Settlement Facilitator will receive notice by email that the evaluation has been completed. If you do not complete the evaluation, the Settlement Facilitator will note that fact on the Certificate of Compliance (see 7 below), and your case may not be closed until you complete the evaluation.

7. Within 5 business days after the settlement conference, the **Settlement Facilitator** will **file** a **Certificate of Compliance** with the Court Clerk.

8. If any participant at any time does not comply with any term of the Order, the other participants should remind him/her of the terms of the Order. If non-compliance continues, any other participant may file a **Notice of Non-Compliance** using the court's form. The judge may take any appropriate action in response to the Notice of Non-Compliance.

9. The Settlement Facilitator or any party may file a **Request for Replacement Settlement Facilitator** using the proper form. *No explanation is required for requesting that the Settlement Facilitator be replaced.* If you use this form, the ADR Office will assign a replacement Settlement Facilitator from the Court's list. If you and the other parties agree on a replacement Settlement Facilitator, use the **Stipulated Request for Replacement Settlement Facilitator.** The rest of the procedures are the same as for a Request for Referral to Settlement Conference.

10. If your case is referred to settlement conference and you do not feel that a settlement conference will be helpful in resolving it, you may ask the Court's permission not to have a settlement conference by filing a Motion for Excusal from Settlement Conference. *Remember, just because you ask for excusal doesn't mean the judge will grant your request. You must continue to comply with the Referral Order until it is modified by another court Order.*

11. **An Order of Referral to Settlement Conference is a court order and *all* of its terms MUST be obeyed by every person to whom it applies!** If for any reason you do not want to or cannot comply with any provision of the Order, you **must ask *and receive*** the court's permission not to comply. If you do not, you may be found to be in contempt of court. **DO NOT JUST IGNORE THE REFERRAL ORDER!**

12. Settlement Facilitators on the Court's list are paid $500.00 for the first 4 hours, which may include up to an hour of preparation time. If the case does not settle during that time and the parties agree to continue, the rate is $150.00 per hour for the next 4 hours. If the case does not settle within that time, and the parties agree to continue the settlement conference, the parties and the Settlement Facilitator shall agree in writing upon an hourly rate to be paid to the Settlement Facilitator. Usually, each party will be responsible for payment of one-half of the Settlement Facilitator's fee. Payment for the first 4 hours is expected prior to the beginning of the settlement conference, unless other arrangements have been made in writing with the Settlement Facilitator.

If you use a settlement facilitator who is not on the Court's list, the Court's fee schedule will not apply.

13. If you feel you cannot afford the cost of a settlement facilitator, you may file a **Motion for Free or Reduced-Cost Settlement Facilitation**. Follow the same filing procedures described above for filing a Request for Referral to Settlement Conference.

DO NOT FILE

The information provided herein is not to be admissible for any purpose, is for settlement purposes only, is strictly confidential, may be withdrawn or modified at any time without notice or cause, and is submitted only with this understanding.

The following information must be provided to the assigned Mediator and to the Defendant Homeowner not later than 10 working days before the mediation session.

CASE NO. _____

_____ vs. _____

File date _____

Assigned to Judge _____

I certify that this Information Response was provided to the foreclosure mediator and all other parties on _____, 20____.

PLAINTIFF'S INFORMATION RESPONSE

A. Please provide the following documents:

(1) a copy of the note and mortgage, if it has not already been provided;

(2) copies of any and all subsequent assignments of the subject note, including any partial, incomplete, or unfiled assignments, and any mergers or other comparable records documenting the merger of the note and mortgage with other documents, if such documents are reasonably available;

(3) any and all notices to the borrower of any such assignments and mergers;

(4) copies of any and all notices required under the note and mortgage.

B. Please provide the full name, mailing address, email address, direct telephone number, and fax number of a **person** with settlement authority who will attend the mediation session (attendance by telephone is allowed if that person does not reside or maintain a business presence in New Mexico). *This*

information must be provided to the defendant homeowner not later than 10 working days before the scheduled date of the mediation session.

C. Are there investors on the loan that must be consulted before a negotiated settlement can be reached? Yes No

If yes, please provide identifying information for each investor, and describe their settlement guidelines on a separate page.

D. Information about the loan

1. $_____ What was the original balance of the loan?

2. $_____ What is the current balance of the loan?

3. $_____ How much was the down payment?

4. _____ What is the current interest rate on this loan?

   Is it *circle one* Fixed Adjustable

   _____ If it is Adjustable, what was the original rate?

   _____ What was the first rate change date?

   Was there an actual change of the rate at any time ?
   Yes No

   _____ How often is the rate change date occurring?

5. $_____ What is the maximum monthly payment, for the note and mortgage only, over the course of the term of the note and mortgage?

6. $_____ What is the current amount of the monthly payment to the lender who is foreclosing?

7. _____ How many payments has the borrower missed? Please bring a list of all payments made under the note, showing amount, date due and date received.

8. $_____ What is your estimate of the current value of this property?

9. $_____ Reinstatement amount, if applicable. Please provide a list of the specific fees and costs included in the reinstatement amount. DO NOT include fees or costs that have not been incurred on the date this information is provided.

10. $_____ Amount of any taxes or insurance payments related to the property made by the Plaintiff.

E. Under appropriate circumstances, which of the following workout options will the lender consider:

YES NO

1. ___ ___ A plan to catch up on delinquent payments.

2. ___ ___ Accepting a deed in lieu of foreclosure.
   - ❑ With deficiency judgment
   - ❑ Without deficiency judgment

3. ___ ___ Accepting a lower payment or interest only payment for some period of time.

4. ___ ___ Reducing the principal amount and adjusting payment amount accordingly.

5. ___ ___ Reducing the interest rate and adjusting the payment amount accordingly.

6. ___ ___ Waiving late fees or penalties.

7. ___ ___ Allowing borrower to rent and remain in the property after foreclosure or deed in lieu of foreclosure.

8. ___ ___ Accepting less than the full amount due in a "short sale."
   - ❑ With a deficiency judgment
   - ❑ Without a deficiency judgment

9. ___ ___ A loan modification that would change an adjustable interest rate to a fixed interest rate.

10. ___ ____ A loan modification that would allow a longer term for repayment of the loan.

11. Any other accommodation, please describe.

_____
_____
_____
_____
_____
_____

NEW YORK

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State of New York Banking Department

Subprime Lending Reform Bill

LAWS OF NEW YORK, 2008

CHAPTER 472

AN ACT to amend the real property actions and proceedings law, the civil practice law and rules, the banking law and the general obligations law, in relation to home mortgage loans; to amend the penal law and the criminal procedure law, in relation to creating new crimes relating to mortgage fraud; and to amend the real property law, in relation to distressed property consulting contracts

Became a law August 5, 2008, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1303 of the real property actions and proceedings law, as added by chapter 308 of the laws of 2006 and subdivision 1 as amended by chapter 154 of the laws of 2007, is amended to read as follows:

§ 1303. Foreclosures; required notices. 1. The foreclosing party in a mortgage foreclosure action, which involves residential real property consisting of owner-occupied one-to-four-family dwellings shall provide notice to the mortgagor in accordance with the provisions of this section with regard to information and assistance about the foreclosure process.

2. The notice required by this section shall be delivered with the summons and complaint to commence a foreclosure action. The notice required by this section shall be in bold, fourteen-point type and shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page.

3. The notice required by this section shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

[Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be extremely careful about any such promises.]

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. **[There]** **In addition to seeking assistance from an attorney or legal aid office, there** are government agencies**[, legal aid entities]** and **[other]** non-profit organizations that you may contact for information about **[foreclosure while you are working]** **possible options, including trying to work** with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at _____ (enter number) or visit the Department's website at _____ (enter web address).

[The State does not guarantee the advice of these agencies.]

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

4. The banking department shall prescribe the telephone number and web address to be included in the notice.

5. The banking department shall post on its website or otherwise make readily available the name and contact information of government agencies or non-profit organizations that may be contacted for information about the foreclosure process, including maintaining a toll-free helpline to disseminate the information required by this section.

§ 2. The real property actions and proceedings law is amended by adding a new section 1304 to read as follows:

§ 1304. Required prior notices. 1. Notwithstanding any other provision of law, with regard to a high-cost home loan, as such term is defined in section six-l of the banking law, a subprime home loan or a non-traditional home loan, at least ninety days before a lender or a mortgage loan servicer commences legal action against the borrower, including mortgage foreclosure, the lender or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following:

"YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

"As of ____, your home loan is ____ days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of _____ dollars by _____.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at _____ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Banking Department's toll-free helpline at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at http://www.banking.state.ny.us"

2. Such notice shall be sent by the lender or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and if different, to the residence which is the subject of the mortgage. Notice is considered given as of the date it is mailed. The notice shall contain a list of at least five United States department of housing and urban development approved housing counseling agencies, or other housing counseling agencies as designated by the division of housing and community renewal, that serve the region where the borrower resides. The list shall include the counseling agencies' last known addresses and telephone numbers. The banking department and/or the division of housing and community renewal shall make available a listing, by region, of such agencies which the lender or mortgage loan servicer may use to meet the requirements of this section.

3. The ninety day period specified in the notice contained in subdivision one of this section shall not apply, or shall cease to apply, if the borrower has filed an application for the adjustment of debts of the borrower or an order for relief from the payment of debts, or if the borrower no longer occupies the residence as the borrower's principal dwelling.

4. The notice and the ninety day period required by subdivision one of this section need only be provided once in a twelve month period to the same borrower in connection with the same loan.

5. (a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board (as said act and regulations are amended from time to time).

(b) "Home loan" means a home loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The principal amount of the loan at origination did not exceed the

conforming loan size that was in existence at the time of origination for a comparable dwelling as established by the federal national mortgage association;

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(c) "Subprime home loan" for the purposes of this section, means a home loan consummated between January first, two thousand three and September first, two thousand eight in which the terms of the loan exceed the threshold as defined in paragraph (d) of this subdivision. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

(d) "Threshold" means, for a first lien mortgage loan, the annual percentage rate of the home loan at consummation of the transaction exceeds three percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month in which the loan was consummated; or for a subordinate mortgage lien, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds five percentage points over the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month in which the loan was consummated; as determined by the following rules: if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate which applies after the initial or introductory period.

(e) "Non-traditional home loan" shall mean a payment option adjustable rate mortgage or an interest only loan consummated between January first, two thousand three and September first, two thousand eight.

(f) For purposes of determining the threshold, the banking department shall publish on its website a listing of constant maturity yields for U.S. Treasury securities for each month between January first, two thousand three and September first, two thousand eight, as published in the Federal Reserve Statistical Release on selected interest rates, commonly referred to as the H.15 release, in the following maturities, to the extent available in such release: six month, one year, two year, three year, five year, seven year, ten year, thirty year.

(g) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) ofsubdivision one of section five hundred ninety of the banking law.

§ 3. The civil practice law and rules is amended by adding a new rule 47 3408 to read as follows:

Rule 3408. Mandatory settlement conference in residential foreclosure actions. (a) In any residential foreclosure action involving a high-cost home loan consummated between January first, two thousand three and September first, two thousand eight, or a subprime or nontraditional home loan, as those terms are defined under section thirteen hundred of the real property actions and proceedings law, in which the defendant is a resident of the property subject to foreclosure, the court shall hold a mandatory conference within sixty days after the date when proof of service is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited todetermining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, and for whatever other purposes the court deems appropriate.

(b) At the initial conference held pursuant to this section, any defendant currently appearing pro se, shall be deemed to have made a motion to proceed as a poor person under section eleven hundred one of

this chapter.The court shall determine whether such permission shall be granted pursuant to standards set forth in section eleven hundred one of this chapter.If the court appoints defendant counsel pursuant to subdivision (a) of section eleven hundred two of this chapter, it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions pursuant to subdivision (a) of this section, and otherwise shall proceed with the conference.

(c) At any conference held pursuant to this section, the plaintiff shall appear in person or by counsel, and if appearing by counsel, such counsel shall be fully authorized to dispose of the case. The defendant shall appear in person or by counsel. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate,the court may permit a representative of the plaintiff to attend the settlement confersnce telephonically or by video-conference.

§ 4. Paragraphs (c), (h) and (j) of subdivision 2 of section 6-1 of the banking law, as added by chapter 626 of the laws of 2002, are amended and five new paragraphs (r), (s), (t), (u) and (v) are added to read as follows:

(c) No negative amortization. No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase. A loan is considered to have such a schedule if the borrower is given the option to make regular periodic payments that cause the principal balance to increase, even if the borrower is also given the option to make regular periodic payments that do not cause the principal balance to increase. This paragraph shall not prohibit negative amortization as a result of a temporary forbearance sought by a borrower.

(h) No financing of insurance or other products sold in connection with the loan. No high-cost home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance premiums, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, [except that insurance] or any product or service that is not necessary or related to the high-cost home loan such as auto club memberships or credit report monitoring, but not including fees paid to the lender, broker, or closing agent, fees related to the recording of the mortgage, title insurance or other settlement fees. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed.

(j) No refinancing of special mortgages. No lender or mortgage broker making or arranging a high-cost home loan may refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a HUD [certified] approved housing counselor or the lender who originally made the special mortgage that a borrower has received home loan counseling in which the advantages and disadvantages of the refinancing has been received.

(r) No prepayment penalties. No prepayment penalties or fees shall be charged or collected on a high-cost home loan. A prepayment penalty in a high-cost home loan shall be unenforceable.

(s) No abusive yield spread premiums. In arranging a high-cost home loan, the mortgage broker shall, at the time of application, disclose the exact amount and methodology of total compensation that the broker will receive. Such amount may be paid as direct compensation from the lender, direct compensation from the borrower, or a combination of the two. The provisions of this paragraph shall not restrict the ability of a borrower to utilize a yield spread premium in order to offset any up front costs by accepting a higher interest rate. If the borrower chooses this option, any compensation from the lender which exceeds the exact amount of total compensation owed to the broker must be credited to the borrower. The superintendent shall prescribe the form that such disclosure shall take. This provision shall not restrict a broker from accepting a lesser amount.

(t) Mandatory escrow of taxes and insurance. No high-cost home loan shall be made after July first, two thousand ten unless the lender requires and collects the monthly escrow of property taxes and hazard

insurance. With respect to a high-cost home loan, a borrower may waive escrow requirements by notifying the lender in writing after one year from consummation of the loan. The provisions of this paragraph shall not apply to a high-cost home loan that is a subordinate lien when the taxes and insurance are escrowed through another home loan or where the borrower can demonstrate a record of twelve months of timely payments of taxes and insurance on a previous home loan.

(u) Mandatory disclosure of taxes and insurance payments. With respect to a high-cost home loan, the first time a borrower is informed of the anticipated or actual periodic payment amount in connection with a first-lien residential mortgage loan for a specific property, the lender or mortgage broker shall inform the borrower that an additional amount will be due for taxes and insurance and shall disclose to the borrower as soon as reasonably possible the approximate amount of the initial periodic payment for property taxes and hazard insurance.

(v) No teaser rates. No lender or mortgage broker shall make or arrange a high-cost home loan which has an initial or introductory rate with a duration of less than six months.

§ 4-a. Subparagraph (ii) of paragraph (1) of subdivision 2 of section 6-l of the banking law, as added by chapter 626 of the laws of 2002, is amended to read as follows:

(ii) A lender or mortgage broker shall not make or arrange a high-cost home loan unless either the lender or mortgage broker has given the following notice in writing to the borrower within three days after determining that the loan is a high-cost home loan, but no less than ten days before closing:

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, which pursuant to New York State Law is a High-Cost Home Loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

You should shop around and compare loan rates and fees. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or mortgage broker you select. Higher rates and fees may be related to the individual circumstances of a particular consumer's application.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. The enclosed list of counselors is provided by the New York State Banking Department.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

[**Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.**]

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors. [**Accordingly, it is important that you make regular payments to your existing creditors.**]"

§ 5. The banking law is amended by adding a new section 6-m to read as follows:

§ 6-m. Subprime home loans. 1. Definitions. The following definitions apply for the purposes of this section:

(a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board (as said act and regulations are amended from time to time).

(b) "Fully indexed rate" means the index rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula, (for example, an interest rate index plus or minus a margin) that applies under the terms of the loan documents to subsequent interest rate adjustments, disre-

garding any limitations on the amount by which the interest rate may change at any one time.

(c) A "Subprime home loan" means a home loan in which the fully indexed annual percentage rate exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) as posted in the week prior to the week when the lender receives a completed application. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

(i) The comparable duration for a home loan shall be determined as follows: for an adjustable or variable home loan with an initial rate that is fixed for less than three years, the Freddie Mac survey result for a one-year adjustable rate mortgage; for an adjustable or variable home loan with an initial rate that is fixed for at least three years, the Freddie Mac survey result for a five-year hybrid adjustable rate mortgage; for a fixed rate home loan with a term of fifteen years or less, the Freddie Mac survey result for a fifteen-year fixed rate mortgage; and for a fixed rate home loan with a term of more than fifteen years, the Freddie Mac survey result for a thirty-year fixed rate mortgage. The superintendent may prescribe by regulation a different comparable duration standard as necessary or appropriate to reflect changes in the terms and types of mortgages included in the Freddie Mac survey.

(ii) Notwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if the superintendent determines that by statute, rule or regulation, different thresholds for determining underwriting standards for subprime loans become applicable to nationally chartered lending institutions, or the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary to achieve parity between such nationally chartered institutions and banking organizations, mortgage banks and mortgage brokers in this state or to alleviate such unduly negative effects. Such determination shall promptly be published on the website of the banking department.

(d) "Home loan" means a home loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The principal amount of the loan does not exceed the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association;

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(e) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of this chapter or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of this chapter.

(f) "Mortgage broker" means a mortgage broker as defined in paragraph (g) of subdivision one of section five hundred ninety of this chapter and a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of this chapter, when such mortgage banker solicits, processes, places or negotiates a mortgage loan for others.

2. Limitations and prohibited practices for subprime home loans. A subprime home loan shall be subject to the following limitations:

(a) No call provisions. No subprime home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision shall not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(b) No negative amortization. No subprime home loan may contain a payment schedule with regular periodic payments that cause or may cause the principal balance to increase. A loan is considered to have such a

schedule if the borrower is given the option to make regular periodic payments that cause the principal balance to increase, even if the borrower is also given the option to make regular periodic payments that do not cause the principal balance to increase. This paragraph shall not prohibit negative amortization as a result of a temporary forbearance sought by a borrower.

(c) No increased interest rate. No subprime home loan may contain a provision which increases the interest rate after default. This provision shall not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents; provided that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(d) Limitation on advance payments. No subprime home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(e) No modification or deferral fees. A lender may not charge a borrower any fees to modify, renew, extend, or amend a subprime home loan or to defer any payment due under the terms of a suprime home loan if, after the modification, renewal, extension or amendment, the loan is still a subprime home loan or, if no longer a subprime home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this paragraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This paragraph shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing subprime home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for subprime home loans. This paragraph shall not apply if the existing subprime home loan is in default or is sixty or more days delinquent and the modification, renewal, extension, amendment or deferral is part of a work-out process.

(f) No oppressive mandatory arbitration clauses. No subprime home loan may be subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers.

(g) No financing of insurance or other products sold in connection with the loan. No subprime home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance premiums, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, or any product or service that is not necessary or related to the home loan such as auto club memberships or credit report monitoring, but not including fees paid to the lender, broker, or closing agent, fees related to the recording of the mortgage, title insurance or other settlement fees. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed.

(h) No "loan flipping". No lender or mortgage broker making or arranging a subprime home loan may engage in the unfair act or practice of "loan flipping". "Loan flipping" is making a home loan to a borrower that refinances an existing home loan when the new loan does not have a tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's situation.

(i) No refinancing of special mortgages. No lender making a subprime home loan may refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a HUD approved housing counselor or the lender who originally made the special mortgage that the borrower has received home loan counseling about the advantages and disadvantages of the refinancing.

(j) No lending without counseling disclosure and list of counselors. A lender or mortgage broker must deliver, place in the mail, fax or electronically transmit the following notice in at least twelve point type

to the borrower of a subprime home loan at the time of application: "You should consider financial counseling prior to executing loan documents. The enclosed list of counselors is provided by the New York State Banking Department." In the event of a telephone application, the disclosures must be made immediately after receipt of the application by telephone. Such disclosure shall be on a separate form. In order to utilize an electronic transmission, the lender or broker must first obtain either written or electronically transmitted permission from the borrower. A list of approved counselors, available from the New York state banking department, shall be provided to the borrower by the lender or the mortgage broker at the time that this disclosure is given.

(k) No encouragement of default. In making or arranging a subprime home loan, a lender or mortgage broker shall not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of the subprime home loan that refinances all or any portion of such existing loan or debt.

(l) Prohibited payments to mortgage brokers. In making or arranging a subprime home loan, no lender or mortgage broker shall accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other than as payment for goods or facilities that were actually furnished or services that were actually performed. Such payment must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.

(m) No prepayment penalties on subprime home loans. No prepayment penalties or fees shall be charged or collected on a subprime home loan. A prepayment penalty in a subprime home loan shall be unenforceable.

(n) No abusive yield spread premiums. In arranging a subprime home loan, the mortgage broker shall, at the time of application, disclose the exact amount and methodology for determining the total compensation that the broker will receive. Such amount may be paid as direct compensation from the lender, direct compensation from the borrower, or a combination of the two. The provisions of this paragraph shall not restrict the ability of a borrower to utilize a yield spread premium in order to offset any upfront costs by accepting a higher interest rate. If the borrower chooses this option, any compensation from the lender which exceeds the exact amount of total compensation owed to the broker must be credited to the borrower. The superintendent shall prescribe the form that such disclosure shall take. This paragraph shall not restrict a broker from accepting a lesser amount.

(o) Mandatory escrow of taxes and insurance. No subprime home loan shall be made after July first, two thousand ten unless the lender requires and collects the monthly escrow of property taxes and hazard insurance. With respect to a subprime home loan, a borrower may waive escrow requirements by notifying the lender in writing after one year from consummation of the loan. The provisions of this paragraph shall not apply to a subprime home loan that is a subordinate lien when the taxes and insurance are escrowed through another home loan or where the borrower can demonstrate a record of twelve months of timely payments of taxes and insurance on a previous home loan.

(p) Mandatory disclosure of taxes and insurance payments. With respect to a subprime home loan, the first time a borrower is informed of the anticipated or actual periodic payment amount in connection with a first-lien residential mortgage loan for a specific property, the lender or mortgage broker shall inform the borrower that an additional amount will be due for taxes and insurance and shall disclose to the borrower as soon as reasonably possible the approximate amount of the initial periodic payment for property taxes and hazard insurance.

(q) No teaser rates. No lender or mortgage broker shall make or arrange a subprime home loan which has an initial or introductory rate with a duration of less than six months.

3. Any provision in a subprime home loan that violates subdivision two of this section shall be rendered void.

4. No arrangement of certain subprime loans. No lender or mortgage broker shall make or arrange a subprime home loan unless the lender or mortgage broker reasonably and in good faith believes at the time the loan is consummated that one or more of the borrowers, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender or mortgage broker making or arranging a subprime home loan knows that one or more home loans secured by the same real property will be made contemporaneously to the same borrower with the subprime home loan being made or arranged by that lender or mortgage broker, the lender or mortgage broker making or arranging the subprime home loan must document the borrower's ability to repay the combined

payments of all loans on the same real property.

(a) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the borrower's credit history, current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the real property that secures repayment of the subprime home loan.

(b) In determining a borrower's ability to repay a subprime home loan, the lender or mortgage broker shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the borrower using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification.

(c) In determining a borrower's ability to repay a subprime home loan according to its terms when the loan has an adjustable rate feature, the lender or mortgage broker shall calculate the monthly payment amount for principal and interest by assuming (i) the loan proceeds are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid in substantially equal monthly amortizing payments of principal and interest over the entire term of the loan, with no balloon payment, and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering any initial discounted rate.

(d) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan may utilize reasonable commercially recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.

5. Subprime home loan mortgages shall include a legend on top of the mortgage in twelve-point type stating that the mortgage is a subprime home loan subject to this section.

6. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by any subterfuge, including but not limited to splitting or dividing any loan transaction into separate parts for the purpose of evading the provisions of this section.

7. A lender of a subprime home loan that, when acting in good faith, fails to comply with the provisions of this section, shall not be deemed to have violated this section if, prior to the institution of any action and before the borrower is prejudiced, the lender notifies the borrower of the compliance failure, appropriate restitution is made, and whatever adjustments that are necessary are made to the loan to make the loan satisfy the requirements of this section.

8. The attorney general or the superintendent may enforce the provisions of this section.

9. Any person found by a preponderance of the evidence to have violated this section shall be liable to the borrower of a subprime home loan for actual damages.

10. A court may also award reasonable attorneys' fees to a prevailing borrower in a foreclosure action.

11. A borrower may be granted injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with this section.

12. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower of a subprime home loan.

13. In any action by a lender or assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert as a defense, any violation of this section.

14. The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid, or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees with respect to a home loan, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees.

§ 6. The banking law is amended by adding a new section 590-b to read as follows:

§ 590-b. Responsibilities. 1. Each mortgage broker shall, in addition to the duties imposed by otherwise applicable provisions of state and federal law, with respect to any transaction, including any practice, or course of business in connection with the transaction, in which the mortgage broker solicits, processes, places or negotiates a home loan;

(a) act in the borrower's interest;
(b) act with reasonable skill, care and diligence;
(c) act in good faith and with fair dealing;
(d) not accept, give, or charge any undisclosed compensation, directly or indirectly, that inures to the benefit of the mortgage broker, whether or not characterized as an expenditure made for the borrower;
(e) clearly disclose to the borrower, not later than three days after receipt of the loan application, all material information as specified by the superintendent that might reasonably affect the rights, interests, or ability of the borrower to receive the borrower's intended benefit from the home loan, including total compensation that the broker would receive from any of the loan options that the lender or mortgage broker presents to the borrower; and
(f) diligently work to present the borrower with a range of loan products for which the borrower likely qualifies and which are appropriate to the borrower's existing circumstances, based on information known by, or obtained in good faith by, the broker.
2. No lender or mortgage broker shall improperly influence or attempt to improperly influence the development, reporting, result or review of a real estate appraisal relating to real property securing a home loan, provided that it shall not be a violation of this prohibition to:
(a) ask an appraiser to consider additional information about a borrower's principal dwelling or about comparable properties;
(b) request that an appraiser provide additional information about the basis for a valuation;
(c) request that an appraiser correct factual errors in a valuation;
(d) obtain multiple appraisals of a borrower's principal dwelling, so long as the lender or mortgage broker adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;
(e) withhold compensation from an appraiser for breach of contract or substandard performance of services;
(f) terminate a relationship with an appraiser for violations of applicable state or federal law or breaches of ethical or professional standards; and
(g) take action permitted or required by applicable state or federal statute, regulation, or agency guidance.
3. Any mortgage broker found by a preponderance of evidence to have violated subdivision one of this section, shall be liable to the borrower for actual damages.
4. Any lender or mortgage broker found by a preponderance of evidence to have violated subdivision two of this section, shall be liable to the borrower for actual damages.
5. A borrower may be granted injunctive, declaratory, and such other equitable relief as the court deems appropriate in an action to enforce compliance with this section.
6. A court may also award reasonable attorneys' fees to a prevailing borrower in a foreclosure action.
7. The attorney general or the superintendent may enforce the provisions of this section.
8. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower.

§ 7. Paragraph (g) of subdivision 1 of section 590 of the banking law, as amended by chapter 293 of the laws of 1987, is amended and two new paragraphs (h) and (i) are added to read as follows:

(g) "Registrant" or "mortgage broker" shall mean a person or entity registered pursuant to section five hundred ninety-one-a of this chapter to engage in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to solicit, process, place or negotiate mortgage loans for others[.]

(h) "Mortgage loan servicer" or "servicer" shall mean a person or entity registered pursuant to subdivision two of this section to engage in the business of servicing mortgage loans for property located in this state;
(i) "Servicing mortgage loans" shall mean receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section six-k of this chapter, title three-A of article nine of the real property tax law or section ten of 12 U.S.C. 2609, and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage service loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in section six-h of this chapter,

sections two hundred eighty and two hundred eighty-a of the real property law or 24 CFR 3500.2, servicing includes making payments to the borrower.

§ 8. Subdivisions 2, 3, 4 and 5 of section 590 of the banking law, subdivisions 2, 3 and 5 as added by chapter 571 of the laws of 1986, paragraph (b) of subdivision 2 and subdivision 4 as amended by chapter 293 of the laws of 1987, are amended to read as follows:

2. Necessity for license. (a) No person, partnership, association, corporation or other entity shall engage in the business of making five or more mortgage loans in any one calendar year without first obtaining a license from the superintendent in accordance with the licensing procedure provided in this article and such regulations as may be promulgated by the banking board or prescribed by the superintendent. The licensing provisions of this subdivision shall not apply to any exempt organization nor to any entity or entities which shall be exempted in accordance with regulations promulgated by the banking board hereunder.

(b) No person, partnership, association, corporation or other entity shall engage in the business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a mortgage loan in this state without first being registered with the superintendent as a mortgage broker in accordance with the registration procedure provided in this article and by such regulations as may be promulgated by the banking board or prescribed by the superintendent. The registration provisions of this subdivision shall not apply to any exempt organization or mortgage banker. No real estate broker or salesman, as defined in section four hundred forty of the real property law, shall be deemed to be engaged in the business of a mortgage broker if he does not accept a fee, directly or indirectly, for services rendered in connection with the solicitation, processing, placement or negotiation of a mortgage loan. No attorney-at-law who solicits, processes, places or negotiates a mortgage loan incidental to his legal practice shall be deemed to be engaged in the business of a mortgage broker. The registration provisions of this subdivision shall not apply to any person or entity which shall be exempted in accordance with regulations promulgated by the banking board hereunder.

(b-1) No person, partnership, association, corporation or other entity shall engage in the business of servicing mortgage loans with respect to any property located in this state without first being registered with the superintendent as a mortgage loan servicer in accordance with the registration procedure provided by such regulations as may be prescribed by the superintendent. The superintendent may refuse to register a mortgage loan servicer on the same grounds that he or she may refuse to issue a registration certificate to a mortgage broker pursuant to subdivision two of section five hundred ninety-two-a of this article. The registration provisions of this subdivision shall not apply to any exempt organization, mortgage banker, or mortgage broker or any person or entity which shall be exempted in accordance with regulations prescribed by the superintendent hereunder; provided that such exempt organization, mortgage banker, mortgage broker, or exempted person notifies the superintendent that it is acting as a mortgage loan servicer in this state and complies with any regulation applicable to mortgage loan servicers, promulgated by the banking board or prescribed by the superintendent with respect to mortgage loan servicers.

(c) A licensee (or) registrant or mortgage loan servicer may apply for authority to open and maintain one or more branch offices.

(d) No person or entity engaged in the building and sale of residential real property, or a financing subsidiary thereof, shall be deemed to be making a mortgage loan, as defined in paragraph (c) of subdivision one of this section, or soliciting, processing, placing or negotiating a mortgage loan, as defined in paragraph (d) of subdivision one of this section, if and only if such person, entity or financing subsidiary shall make, solicit, process, place or negotiate a mortgage loan with respect to residential real property it has built through a licensee or exempt organization which is acting as its agent in compliance with this article and regulations promulgated hereunder.

3. (Banking board) Rules and regulations. In addition to such powers as may otherwise be prescribed by this chapter, the banking board is hereby authorized and empowered to promulgate such rules and regulations as may in the judgement of the banking board be consistent with the purposes of this article, or appropriate for the effective administration of this article, including, but not limited to:

(a) Such rules and regulations in connection with the activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt

organizations as may be necessary and appropriate for the protection of consumers in this state;

(b) Such rules and regulations as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt organizations in making mortgage loans;

(c) Such rules and regulations as may define the terms used in this article and as may be necessary and appropriate to interpret and implement the provisions of this article; and

(d) Such rules and regulations as may be necessary for the enforcement of this article.

The banking board is hereby authorized and empowered to make such specific rulings, demands and findings as it may deem necessary for the proper conduct of the mortgage lending industry.

4. Exemptions from provisions of article. No person shall be subject to the licensure or registration provisions of this article if he or she is employed by an exempt organization, a licensee or registrant, or a mortgage loan servicer to assist in the performance of the business activities described in this article for the exempt organization, licensee or registrant, or a mortgage loan servicer or is engaged in regulated activities as an associate or affiliate of a registrant, a licensee, a mortgage loan servicer or exempt organization which has filed an undertaking of accountability with the superintendent.

No employee of an exempt organization shall be subject to the licensure or registration provisions of this article due to such employee's assisting in the performance of the business activities of a mortgage banker that is controlled by the exempt organization or affiliated with the exempt organization through common ownership or control.

5. Activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt organizations. (a) Mortgage brokers may not make mortgage loans in this state;

(b) Mortgage brokers shall solicit, process, place and negotiate mortgage loans [**only**] in conformity with the provisions of this [**article and**] chapter, such rules and regulations as may be promulgated by the banking board or prescribed by the superintendent [**pursuant to this article**] thereunder and all applicable federal laws and the rules and regulations promulgated thereunder;

(c) Mortgage bankers and exempt organizations shall make mortgage loans [**only**] in conformity with the provisions of this [**article and**] chapter, such rules and regulations as may be promulgated by the banking board or prescribed by the superintendent [**pursuant to this article**] thereunder and all applicable federal laws and the rules and regulations promulgated thereunder;

(d) Mortgage loan servicers shall engage in the business of servicing mortgage loans in conformity with the provisions of this chapter, such rules and regulations as may be promulgated by the banking board or prescribed by the superintendent thereunder and all applicable federal laws and the rules and regulations promulgated thereunder.

(e) Nothing in this section shall be construed to limit any otherwise applicable state or federal law or regulations.

§ 9. The banking law is amended by adding a new section 595-b to read as follows:

§ 595-b. Regulation of mortgage loan servicers. 1. Establishment of grounds to impose a fine or penalty. In addition to such other rules, regulations and policies as the banking board may promulgate or the superintendent may prescribe to effectuate the purposes of this article, the superintendent shall promulgate regulations and policies governing the establishment of grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer.

2. Servicing practices. In addition to such other rules, regulations and policies as the banking board may promulgate to effectuate the purposes of this article, the superintendent may prescribe regulations which relate to: (a) providing for disclosures to borrowers of the basis for any interest rate resets; (b) requirements for the provision of pay-off statements; and (c) governing the timing of the crediting of payments made by the borrower.

§ 10. Section 596 of the banking law, as amended by chapter 571 of the laws of 1986, is amended to read as follows:

§ 596. Superintendent authorized to examine; expenses. For the purpose of discovering violations of this article or securing information lawfully required by him hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him, investigate the business and examine the books, accounts, records, and files used therein of every licensee,

servicer and registrant. For that purpose the superintendent and his **or her** duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such licensees**, servicers** and registrants. The superintendent and any person duly designated by him **or her** shall have authority to require the attendance of and to examine under oath all persons whose testimony he **or she** may require relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee**, servicer** or registrant so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees**, servicers** or registrants in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee**, servicer** or registrant shall become liable for and shall pay such assessment to the superintendent.

In any hearing in which the bank examiner acting under authority of this chapter is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by said bank examiner, after being duly authenticated by said examiner, may be admitted as competent evidence upon the oath of said examiner that said worksheet, investigative report, or other related documents were prepared as a result of an examination of the books and records of a licensee**, servicer** or registrant or other person, conducted pursuant to the authority of this chapter.

§ 11. Section 597 of the banking law, as amended by chapter 571 of the laws of 1986 and the opening paragraph as amended by chapter 499 of the laws of 1995, is amended to read as follows:

§ 597. Books and records; reports. Each licensee, **servicer,** registrant and exempt organization shall keep and use in its business such books, accounts and records as will enable the superintendent to determine whether such licensee, **servicer,** registrant or exempt organization is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent and the banking board. Every licensee, **servicer,** registrant and exempt organization shall preserve such books, accounts, and records, for at least three years; provided, however, that preservation by photographic reproduction thereof or records in photographic form, including an optical disk storage system and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination upon request shall constitute compliance with the requirements of this section.

Each licensee and registrant shall annually, on or before a date to be determined by the superintendent, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such licensee or registrant under authority of this article. Such report shall be subscribed and affirmed as true by the licensee or registrant under the penalties of perjury and shall be in the form prescribed by the superintendent. In addition to annual reports, the superintendent may require such additional regular or special reports as he may deem necessary to the proper supervision of licensees and [**registrant**] **registrants** under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

The superintendent may require servicers to file annual reports or other regular or special reports, including reports with respect to mortgage delinquencies and foreclosures. Such reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

§ 12. Subdivision 1 of section 598 of the banking law, as amended by section 57 of part O of chapter 59 of the laws of 2006, is amended to read as follows;

1. In addition to such penalties as may otherwise be applicable by law, the superintendent may, after notice and hearing as provided elsewhere in this article, require any entity, licensee, **servicer,** registrant or exempt organization found violating the provisions of this article or the rules or regulations promulgated hereunder to pay to the people of this state an additional penalty for each violation of the article or any regulation or policy promulgated hereunder a sum not to exceed an amount as determined pursuant to section forty-four of this

chapter for each such violation.

§ 13. Subdivision 3 of section 599-b of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

3. "Originating entity" means a person or entity licensed **as a mortgage banker** or registered **as a mortgage broker** pursuant to article twelve-D of this chapter.

§ 14. Subdivision 10 of section 36 of the banking law, as amended by chapter 566 of the laws of 2004, is amended to read as follows:

10. All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, including any duly authenticated copy or copies thereof in the possession of any banking organization, bank holding company or any subsidiary thereof (as such terms "bank holding company" and "subsidiary" are defined in article three-A of this chapter), any corporation or any other entity affiliated with a banking organization within the meaning of subdivision six of this section and any non-banking subsidiary of a corporation or any other entity which is an affiliate of a banking organization within the meaning of subdivision six-a of this section, foreign banking corporation, licensed lender, licensed casher of checks, licensed mortgage banker, registered mortgage broker, licensed sales finance company, **registered mortgage loan servicer,** licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or the department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or any part thereof in such manner as may be deemed proper. For the purposes of this subdivision, "reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations", includes any such materials of a bank, insurance or securities regulatory agency or any unit of the federal government or that of this state any other state or that of any foreign government which are considered confidential by such agency or unit and which are in the possession of the department or which are otherwise confidential materials that have been shared by the department with any such agency or unit and are in the possession of such agency or unit.

§ 15. Subdivisions 1, 2 and 5 of section 39 of the banking law, as amended by chapter 553 of the laws of 2007, are amended to read as follows:

1. To appear and explain an apparent violation. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, **registered mortgage loan servicer,** authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business or maintain a representative office in this state has violated any law or regulation, he or she may, in his or her discretion, issue an order describing such apparent violation and requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation to appear before him or her, at a time and place fixed in said order, to present an explanation of such apparent violation.

2. To discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, **registered mortgage loan servicer,** authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business in this state is conducting business in an unauthorized or unsafe and unsound manner, he or she may, in his or her discretion, issue an order directing the discontinuance of such unau-

thorized or unsafe and unsound practices, and fixing a time and place at which such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, **registered mortgage loan servicer,** authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation may voluntarily appear before him or her to present any explanation in defense of the practices directed in said order to be discontinued.

5. To keep books and accounts as prescribed. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker [**or**], licensed mortgage banker, **registered mortgage loan servicer,** authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, agency or branch of a foreign banking corporation licensed by the superintendent to do business in this state, does not keep its books and accounts in such manner as to enable him or her to readily ascertain its true condition, he or she may, in his or her discretion, issue an order requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, **registered mortgage loan servicer,** authorized mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or foreign banking corporation, or the officers or agents thereof, or any of them, to open and keep such books or accounts as he or she may, in his or her discretion, determine and prescribe for the purpose of keeping accurate and convenient records of its transactions and accounts.

§ 16. Paragraph (a) of subdivision 1 of section 44 of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

(a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, registered mortgage broker, authorized mortgage loan originator, **registered mortgage loan servicer** or licensed budget planner to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent or banking board in connection with the grant of any application or request, or any written agreement entered into with the superintendent.

§ 17. Section 1302 of the real property actions and proceedings law, as added by chapter 626 of the laws of 2002, is amended to read as follows:

§ 1302. Foreclosure of high-cost home loans **and subprime home loans**. 1. Any complaint served in a proceeding initiated pursuant to this article relating to a high-cost home loan **or a subprime home loan**, as **such terms are** defined in section six-l **and six-m** of the banking law, **respectively,** must contain an affirmative allegation[**, which allegation must be proven to the satisfaction of the court before entry of judgment by default or otherwise,**] that **at the time the proceeding is commenced,** the plaintiff [**mortgage banker or exempt organization**]**:**

(a) is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note; and

(b) has complied with all of the provisions of section five hundred ninety-five-a **of the banking law** and **any rules and regulations promulgated thereunder,** section six-l **or six-m** of the banking law**, and section thirteen hundred four of this article**.

2. It shall be a defense to an action to foreclose a mortgage **for a high-cost home loan or subprime home loan** that the **terms of the** home loan [**violates**] **or the actions of the lender violate** any provision of section six-l **or six-m** of the banking law **or section thirteen hundred four of this article**.

§ 18. Paragraph b of subdivision 3 of section 5-501 of the general obligations law, as amended by chapter 883 of the laws of 1980, is amended to read as follows:

b. notwithstanding any other provision of law, the unpaid balance of

the loan or forbearance may be prepaid, in whole or in part, at any time. If prepayment is made on or after one year from the date the loan or forbearance is made, no penalty may be imposed. If prepayment is made prior to such time, no penalty may be imposed unless provision therefor is expressly made in the loan contract, **provided that no penalty may be imposed if prohibited by sections six-l and six-m of the banking law.** In all cases, the right of prepayment shall be stated in the instrument evidencing the loan or forbearance, provided, however, that the provisions of this subdivision shall not apply to the extent such provisions are inconsistent with any federal law or regulation.

§ 19. The penal law is amended by adding a new article 187 to read as follows:

ARTICLE 187
RESIDENTIAL MORTGAGE FRAUD

Section 187.00 Definitions.
187.05 Residential mortgage fraud in the fifth degree.
187.10 Residential mortgage fraud in the fourth degree.
187.15 Residential mortgage fraud in the third degree.
187.20 Residential mortgage fraud in the second degree.
187.25 Residential mortgage fraud in the first degree.

§ 187.00 Definitions.

As used in this article:

1. "Person" means any individual or entity, other than an individual who applies for a residential mortgage loan and intends to occupy such residential property which such mortgage secures unless such person acts as an accessory to an individual or entity in committing any crime defined in this article.

2. "Residential mortgage loan" means a loan or agreement to extend credit, including the renewal or refinancing of any such loan, made to a person, which loan is primarily secured by either mortgage, deed of trust, or other lien upon any interest in residential real property or certificate of stock or other evidence of ownership in a corporation or partnership formed for the purpose of cooperative ownership of residential real property.

3. "Residential real property" means real property improved by a one-to-four family dwelling, or a residential unit in a building including units owned as condominiums or on a cooperative basis, used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

4. "Residential mortgage fraud" is committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be used in soliciting an applicant for a residential mortgage loan, or in applying for, the underwriting of, or closing of a residential mortgage loan, or in documents filed with a county clerk of any county in the state arising out of and related to the closing of a residential mortgage loan, any written statement which he or she knows to:

(a) contain materially false information concerning any fact material thereto; or

(b) conceal, for the purpose of misleading, information concerning any fact material thereto.

§ 187.05 Residential mortgage fraud in the fifth degree.

A person is guilty of residential mortgage fraud in the fifth degree when he or she commits residential mortgage fraud.

Residential mortgage fraud in the fifth degree is a class A misdemeanor.

§ 187.10 Residential mortgage fraud in the fourth degree.

A person is guilty of residential mortgage fraud in the fourth degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of one thousand dollars.

Residential mortgage fraud in the fourth degree is a class E felony.

§ 187.15 Residential mortgage fraud in the third degree.

A person is guilty of residential mortgage fraud in the third degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of three thousand dollars.

Residential mortgage fraud in the third degree is a class D felony.

§ 187.20 Residential mortgage fraud in the second degree.

A person is guilty of residential mortgage fraud in the second degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of fifty thousand dollars.

Residential mortgage fraud in the second degree is a class C felony.

§ 187.25 Residential mortgage fraud in the first degree.

A person is guilty of residential mortgage fraud in the first degree when he or she commits residential mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of one million dollars.

Residential mortgage fraud in the first degree is a class B felony.

§ 20. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as separately amended by chapters 568 and 570 of the laws of 2007, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the

penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, **residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law,** escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a [**dangerous**] weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

§ 21. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 568 of the laws of 2007, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; **sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud,** sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections

235.06, 235.07 and 235.21 relating to obscenity; section 263.10 relating to promoting an obscene sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

§ 22. Section 78 of the banking law, as added by chapter 321 of the laws of 1992, is amended to read as follows:

§ 78. Powers of the bureau. If the criminal investigations bureau has a reasonable suspicion that a person or entity subject to the jurisdiction of the department has, in connection with activities authorized by this chapter, engaged in, or is engaging in an activity which is a misdemeanor or felony under this chapter or under [**articles**] **article** one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, **one hundred eighty-seven,** one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law, the superintendent may undertake such investigation as is deemed necessary, and in the enforcement of this chapter, determine whether any such person or entity has violated or is about to violate any of the above referenced laws or articles. Provided, however, that the scope of authority set forth in this section shall not be deemed to otherwise limit or impair the ability of the department to assist any other entity in an investigation involving a violation of law.

§ 23. Subdivision 2 of section 592 of the banking law, as amended by chapter 146 of the laws of 2003, is amended to read as follows:

2. The superintendent may refuse to issue a license pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, **one hundred eighty-seven,** one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state or (b) has had a license or registration revoked by the superintendent or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 24. Subdivision 2 of section 592-a of the banking law, as amended by chapter 146 of the laws of 2003, is amended to read as follows:

2. The superintendent may refuse to issue a certificate pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, **one hundred eighty-seven,** one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state or (b) has had a license or registration revoked by the superintendent or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be

deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 25. Paragraph (a) of subdivision 3 of section 599-c of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

(a) The superintendent may refuse to issue a certificate pursuant to this article if he or she shall find that the applicant (i) has been convicted of a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, **one hundred eighty-seven,** one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state, or (ii) has had an authorization revoked by the superintendent or a regulatory person or entity of another state that regulates persons engaging in mortgage loan originating, or (iii) has been a director, partner, or substantial stockholder of an originating entity which has had a registration or license revoked by the superintendent or a regulatory person or entity of another state that regulates such originating entity, or (iv) has been an employee, officer or agent of, or a consultant to, an originating entity which has had a registration or license revoked by the superintendent or a regulatory person or entity of another state that regulates such originating entity where such person shall have been found by the superintendent or by such similar regulatory person or entity of another state to bear responsibility in connection with such revocation.

§ 26. The real property law is amended by adding a new section 265-b to read as follows:

§ 265-b. Distressed property consulting contracts. 1. Definitions. The following definitions shall apply to this section:

(a) "Homeowner" means a natural person who is the mortgagor with respect to a distressed home loan or who is in danger of losing a home for nonpayment of taxes.

(b) "Consulting contract" or "contract" means an agreement between a homeowner and a distressed property consultant under which the consultant agrees to provide consulting services.

(c) "Consulting services" means services provided by a distressed property consultant to a homeowner that the consultant represents will help to achieve any of the following:

(i) stop, enjoin, delay, void, set aside, annul, stay or postpone a foreclosure filing, a foreclosure sale or the loss of a home for nonpayment of taxes;

(ii) obtain forbearance from any servicer, beneficiary or mortgagee or relief with respect to the potential loss of the home for nonpayment of taxes;

(iii) assist the homeowner to exercise a right of reinstatement or similar right provided in the mortgage documents or any law or to refinance a distressed home loan;

(iv) obtain any extension of the period within which the homeowner may reinstate or otherwise restore his or her rights with respect to the property;

(v) obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a property in foreclosure;

(vi) assist the homeowner to obtain a loan or advance of funds;

(vii) assist the homeowner in answering or responding to a summons and complaint, or otherwise providing information regarding the foreclosure complaint and process;

(viii) avoid or ameliorate the impairment of the homeowner's credit resulting from the commencement of a foreclosure proceeding or tax sale; or

(ix) save the homeowner's property from foreclosure or loss for nonpayment of taxes.

(d) "Distressed home loan" means a home loan that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitle the lender to accelerate full payment of the mortgage and repossess the property, or a home loan where the lender has commenced a foreclosure action. For purposes of this paragraph, a "home loan" is a loan in which the debt is incurred by the homeowner primarily for personal, family or household purposes, and the loan is secured by a mortgage or deed of trust on property upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied

by the homeowner as the homeowner's principal dwelling.

(e) "Distressed property consultant" or "consultant" means an individual or a corporation, partnership, limited liability company or other business entity that, directly or indirectly, solicits or undertakes employment to provide consulting services to a homeowner for compensation or promise of compensation with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes. A consultant does not include the following:

(i) an attorney admitted to practice in the state of New York;

(ii) a person or entity who holds or is owed an obligation secured by a lien on any property in foreclosure while the person or entity performs services in connection with the obligation or lien;

(iii) a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of banks or the comptroller of the currency;

(iv) a federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of such mortgagee, and any agent or employee of these persons while engaged in the business of such mortgagee;

(v) a judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale is sent;

(vi) a title insurer authorized to do business in this state, while performing title insurance and settlement services;

(vii) a person licensed as a mortgage banker or registered as a mortgage broker or registered as a mortgage loan servicer as defined in article twelve-D of the banking law;

(viii) a bona fide not-for-profit organization that offers counseling or advice to homeowners in foreclosure or loan default; or

(ix) a person licensed or registered in the state to engage in the practice of other professions that the superintendent of banks has determined should not be subject to this section.

(f) "Property" shall mean real property located in this state improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

(g) "Business day" shall mean any calendar day except Sunday or the public holidays as set forth in section twenty-four of the general construction law.

2. Prohibitions. A distressed property consultant is prohibited from doing the following:

(a) performing consulting services without a written, fully executed consulting contract with a homeowner;

(b) charging for or accepting payment for consulting services before the full completion of such services;

(c) taking a power of attorney from a homeowner;

(d) retaining any original loan document or other original document related to the distressed home loan, the property or the potential loss of the home for nonpayment of taxes; or

(e) inducing or attempting to induce a homeowner to enter a consulting contract that does not fully comply with the provisions of this article.

3. Distressed property consulting contracts. (a) A distressed property consulting contract shall:

(i) contain the entire agreement of the parties;

(ii) be provided in writing to the homeowner for review before signing;

(iii) be printed in at least twelve point type and written in the same language that is used by the homeowner and was used in discussions between the consultant and the homeowner to describe the consultant's services or to negotiate the contract;

(iv) fully disclose the exact nature of the distressed property consulting services to be provided by the distressed property consultant or anyone working in association with the distressed property consultant;

(v) fully disclose the total amount and terms of compensation for such consulting services;

(vi) contain the name, business address and telephone number of the consultant and the street address (if different) and facsimile number or email address of the distressed property consultant where communications from the homeowner may be delivered;

(vii) be dated and personally signed by the homeowner and the

distressed property consultant and be witnessed and acknowledged by a New York notary public; and

(viii) contain the following notice, which shall be printed in at least fourteen point boldface type, completed with the name of the distressed property consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract, without any penalty or obligation, at any time before midnight of _____ (fifth business day after execution).

_____ (Name of Distressed Property Consultant) (the "Consultant") or anyone working for the Consultant may not take any money from you or ask you for money until the Consultant has completely finished doing everything this Contract says the Consultant will do.

You should consider consulting an attorney or a government-approved housing counselor before signing any legal document concerning your home. It is advisable that you find your own attorney, and not consult with an attorney recommended or provided to you by the Consultant. A list of housing counselors may be found on the website of the New York State Banking Department, www.banking.state.ny.us or by calling the Banking Department toll-free at 1-877-BANK-NYS (1-877-226-5697). The law requires that this contract contain the entire agreement between you and the Consultant. You should not rely upon any other written or oral agreement or promise."

The distressed property consultant shall accurately enter the date on which the right to cancel ends.

(b)(i) The homeowner has the right to cancel, without any penalty or obligation, any contract with a distressed property consultant until midnight of the fifth business day following the day on which the distressed property consultant and the homeowner sign a consulting contract. Cancellation occurs when the homeowner, or a representative of the homeowner, either delivers written notice of cancellation in person to the address specified in the consulting contract or sends a written communication by facsimile, by United States mail or by an established commercial letter delivery service. A dated proof of facsimile delivery or proof of mailing creates a presumption that the notice of cancellation has been delivered on the date the facsimile is sent or the notice is deposited in the mail or with the delivery service. Cancellation of the contract shall release the homeowner of all obligations to pay fees or any other compensation to the distressed property consultant.

(ii) The consulting contract shall be accompanied by two copies of a form, captioned "notice of cancellation" in at least twelve-point bold type. This form shall be attached to the contract, shall be easily detachable, and shall contain the following statement written in the same language as used in the contract, and the contractor shall insert accurate information as to the date on which the right to cancel ends and the contractor's contact information:

"NOTICE OF CANCELLATION

Note: You may cancel this contract, without any penalty or obligation, at any time before midnight of _____. (Enter date)

To cancel this contract, sign and date both copies of this cancellation notice and personally deliver one copy or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to the Distressed Property Consultant at one of the following:

Name of Contractor_____
Street Address_____
City, State, Zip_____
Facsimile:_____

I hereby cancel this transaction.

Name of Homeowner:_____

Signature of Homeowner:_____

Date:_____"

(iii) Within ten days following receipt of a notice of cancellation given in accordance with this subdivision, the distressed property consultant shall return any original contract and any other documents signed by or provided by the homeowner. Cancellation shall release the homeowner of all obligations to pay any fees or compensation to the

distressed property consultant.

4. Penalties and other provisions. (a) If a court finds that a distressed property consultant has violated any provision of this section, the court may make null and void any agreement between the distressed homeowner and the distressed property consultant.

(b) If the distressed property consultant violates any provision of this section and the homeowner suffers damage because of the violation, the homeowner may recover actual and consequential damages and costs from the distressed property consultant in an action based on this section. If the distressed property consultant intentionally or recklessly violates any provision of this section, the court may award the homeowner treble damages, attorneys' fees and costs.

(c) Any provision of a consulting contract that attempts or purports to limit the liability of the distressed property consultant under this section shall be null and void. Inclusion of such provision shall at the option of the homeowner render the consulting contract void. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this section shall be void at the option of the homeowner. Any waiver of the provisions of this section shall be void and unenforceable as contrary to public policy.

(d) In addition to the other remedies provided, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(e) The provisions of this section are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

§ 27. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 28. This act shall take effect immediately; provided, however, that:

a. sections one and seventeen of this act shall apply to actions that are commenced on or after September 1, 2008;

b. sections two and twenty-six of this act shall take effect September 1, 2008;

c. sections four, five, six, thirteen and eighteen of this act shall apply to loans that are consummated on or after September 1, 2008;

d. section four-a of this act shall of this act take effect July 1, 2010;

e. sections seven through twelve and fourteen through sixteen of this act shall take effect July 1, 2009;

f. sections nineteen through twenty-five of this act shall take effect on the first day of November next succeeding the date upon which it shall have become a law; and

g. provided however, effective immediately the promulgation of any rules, regulations or actions necessary for timely implementation of the provisions of this act are hereby authorized.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

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Subprime Lending Reform Bill: Overview | Text of the Law | Industry Letter | Frequently Asked Questions | Foreclosure Counselors | Pre Purchase Counselors |
Treasury Rates: 2009 |2008 | 2007 | 2006 | 2005 | 2004 | 2003 |
| Freddie Mac Rates |
| Contact Us |

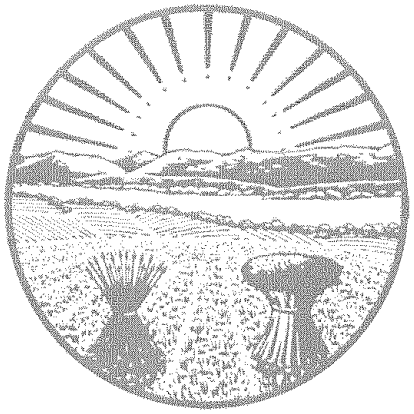
OHIO

THE SUPREME COURT *of* OHIO

Foreclosure Mediation
Program Model

Last Updated: 04/14/2008

Foreclosure Mediation Program Model



The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

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THE SUPREME COURT of OHIO

Table of Contents

** Other relevant statutes and rules are available online at:*
www.supremecourtofohio.gov/dispute_resolution/

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I. Foreclosure Letter from Chief Justice Thomas J. Moyer to the Courts of Ohio

The Supreme Court of Ohio

65 South Front Street, Columbus, OH 43215-3431

Chief Justice
Thomas J. Moyer

Justices
Paul E. Pfeifer
Evelyn Lundberg Stratton
Maureen O'Connor
Terrence O'Donnell
Judith Ann Lanzinger
Robert R. Cupp

Thomas J. Moyer
Chief Justice

Telephone 614.387.9010
Toll Free 800.826.9010
Facsimile 614.387.9019
www.supremecourtofohio.gov

February 5, 2008

Dear Judge:

An intensive effort led by the Supreme Court's Dispute Resolution Section and Advisory Committee, in collaboration with State Treasurer Richard Cordray and the Offices of Governor Strickland and Attorney General Dann, and representatives of mortgage lenders, bar associations, and other local and statewide stakeholders has culminated in the attached foreclosure mediation program model. The goal is to give individuals involved in foreclosure cases the same access to mediation that has been regularly provided in other types of civil cases for over a decade. I commend all of those whose dedication of time and other resources has produced a creative response to the foreclosure phenomenon in Ohio.

The model, which includes processes, forms and other documents, focuses on residential foreclosure cases and contains options to enable courts to make modifications based on available mediation resources while also meeting the needs of their communities. Supreme Court personnel are available to assist with the implementation of the model and to provide public education and training specific to foreclosure cases.

I encourage all courts with a foreclosure docket to consider mediation as an effective means of resolving foreclosure actions to the satisfaction of all parties. Questions and assistance with implementation and the training regarding foreclosure mediation programs may be directed to Jacqueline Hagerott, Manager of the Dispute Resolution Section at: hagerotj@sconet.state.oh.us or 614.387.9422.

Sincerely,

Thomas J. Moyer

Enclosure
cc: Court Administrator

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II. Dispute Resolution Section & Court News

THE SUPREME COURT of OHIO

Dispute Resolution Section

The purpose of the Dispute Resolution Section is to promote statewide rules and uniform standards concerning dispute resolution programs and to develop and deliver dispute resolution services to Ohio courts including training programs for judges and court personnel.

NEW **Foreclosure Mediation Program Model** *(Last Updated April 14, 2008)*

Vision

Resources

Advisory Committee on Dispute Resolution

Events Calendar
2008
2007
Ohio Basic Mediation Training

Frequently Asked Questions

THE SUPREME COURT *of* OHIO

Court News

Feb. 7, 2008
Foreclosure Mediation Program Model Now Available to Ohio Courts

Statewide Initiative First of Its Kind in Nation

A model program has been sent to Ohio courts to use mediation in home foreclosure cases. Chief Justice Thomas J. Moyer made the announcement today during a speech to Ohio Associated Press writers and editors meeting at the Ohio Judicial Center.

"Mediation will assist courts in managing the explosion of foreclosure cases on their dockets for a more efficient administration of justice while assisting Ohio's most vulnerable homeowners facing the prospect of losing their homes," Chief Justice Moyer said. "I am calling on all judges in Ohio who have jurisdiction over foreclosure cases to utilize the model in their courtroom by modifying it to meet the needs and resources of their communities."

The foreclosure mediation program model is a direct response to Ohio's rising mortgage crisis. According to figures by the Supreme Court, foreclosure filings in Ohio rose more than 40 percent in 2007 when compared to 2003. Eighty-five of 88 counties experienced increases in 2007, with the top five counties being Cuyahoga, Franklin, Hamilton, Montgomery and Summit.

The model is the first of its kind in the nation, and was developed by the Supreme Court's Dispute Resolution Section and Advisory Committee that created a Foreclosure Working Group including judges, magistrates, mediators, attorneys, legal aid representatives, educators, mortgage bankers and representatives of homeowners. The Foreclosure Legal Assistance Group of Ohio (FLAG-Ohio), a coalition of governmental and nonprofit partners, worked in an advisory capacity to support this effort.

It includes best practices, related documents, forms and other resources and is designed for courts to modify. Since not every foreclosure case is appropriate for mediation, the model is designed to assist courts to determine those cases that are appropriate through the assessment of information provided by both the homeowner and the lender.

The Supreme Court is offering free assistance to local courts to implement the model and provide public education and training specific to foreclosure cases. More information is available at: www.supremecourtofohio.gov.

"We are providing the tools to facilitate the use of mediation at the local level in resolving foreclosure cases, giving these cases the same access to mediation that has been regularly available in other types of civil cases for more than a decade," Moyer said.

FLAG-Ohio includes the Supreme Court of Ohio, the Ohio Treasurer's Office, the Governor's Office, the Attorney General's Office, the Ohio State Bar Association, the Equal Justice Foundation, the Ohio Legal Assistance Foundation, the Ohio State Legal Services Association, the Coalition on Homelessness and Housing for Ohio, and the Legal Aid Society of Southwest Ohio, Legal Aid Society of Cleveland.

Contact: Chris Davey at 614.387.9250.

Tuesday, April 1, 2008

FOR IMMEDIATE RELEASE

Statewide Effort Provides Legal Assistance for Homeowners Facing Foreclosure

Expanded Save the Dream Program Consolidates State Resources

COLUMBUS – In an extraordinary multi-agency effort, state leaders today announced the latest component of Ohio's "Save the Dream" foreclosure assistance program: a new initiative that connects qualified homeowners with legal aid lawyers and nearly 1,100 attorneys statewide who have volunteered to provide legal services free of charge.

Gov. Ted Strickland, Chief Justice Thomas J. Moyer, Attorney General Marc Dann, Ohio Treasurer Richard Cordray, Director of Commerce Kimberly Zurz, Ohio State Bar Association President Rob Ware and legal aid leaders kicked off the effort at a Statehouse news conference in Columbus, and other events were held later in the day in Cleveland, Cincinnati, Dayton, Toledo, Youngstown and Marietta.

"Ohio's leaders are working together toward one common goal – keeping as many people as possible out of foreclosure," Strickland said. "We will continue to use our collective resources to do everything within our power to reduce the number of foreclosures in our state. The State of Ohio's Save the Dream program will provide another valuable resource to homeowners faced with losing their home."

Statistics tracked by the Supreme Court of Ohio show that there were more than 83,000 new foreclosure court filings in Ohio in 2007, which is a record high.

Save the Dream is a unique effort that consolidates numerous state resources and programs related to foreclosure into one, unified program for citizens to access for assistance.

The Ohio Department of Commerce launched Save the Dream on March 13 as a public awareness campaign that includes radio and television advertisements, a user-friendly Web site at www.savethedream.ohio.gov, and a telephone hotline (888-404-4674) that provides callers with information and access to an approved housing counselor.

Under the new component announced today, homeowners facing foreclosure can call the hotline to see if they meet the income and other eligibility requirements to be connected with a pro bono or legal aid attorney. Qualified homeowners will be connected with a local legal aid program to be matched with an attorney. Basic income eligibility is 250 percent of the federal poverty guidelines, which is about $54,000 annual income for a family of four.

The public information campaign and the legal assistance initiative both fulfill specific recommendations of the Governor's Foreclosure Prevention Task Force, which was chaired by Zurz.

Many homeowners threatened with foreclosure cannot afford an attorney, and the resources available in the legal services community alone are inadequate to address the current need. Consequently, Chief Justice Moyer, Attorney General Dann and OSBA President Ware in February sent a letter to more than 34,000 registered Ohio attorneys calling on them to offer free legal services to assist homeowners facing foreclosures. So far, nearly 1,100 attorneys have registered to help.

"We believe that pro bono work is an obligation of every attorney to facilitate public access to justice," said Chief Justice Moyer. "I'm impressed, yet not surprised, by the outpouring of support from Ohio attorneys to help with foreclosure cases."

"The message we delivered today is clear and simple," said Cordray. "Help is available. There are options and there is hope. But, the key to success is early intervention. Consumers and leaders need to unite and act now, there is no time left to waste."

"Today, we in state government, the Courts, and the legal profession are proud to announce that we have developed a way to help hardworking people who have been victimized by predatory lenders save their homes," said Attorney General Dann. "It is our hope that the brokers, servicers, and bankers who hold the tens of thousands of mortgages now in jeopardy of foreclosure will work with us to avert this crisis."

The Ohio State Bar Association conducted statewide foreclosure training for nearly 350 pro bono attorneys in March. Additional follow-up replays of the training are being coordinated through local bar associations and the Ohio Legal Assistance Foundation.

"Nearly 1,100 Ohio lawyers have volunteered to assist Ohio homeowners facing the potential loss of their homes," said OSBA President Ware. "These 1,100 lawyers – and more will join their ranks – are being assigned to local legal services providers to be matched with qualified clients and will work with lower income Ohioans who could not otherwise afford legal counsel. These pro bono attorneys will supplement the resources available in the legal services community which alone are inadequate to address the current need. We are committed to helping Ohioans stay in their homes – to save their dreams – wherever possible."

"Ohio's legal aid and partner volunteer lawyers have joined in an unprecedented effort to provide much needed legal assistance to homeowners," said Robert M. Clyde, Executive Director of the Ohio Legal Assistance Foundation, which provides funding for Ohio's legal aid delivery system. "This collaboration, which we believe is the first of its kind focused on foreclosure, will address a critical need of Ohio's low income citizens."

Save the Dream includes the following services intended to assist Ohioans in danger of losing their homes:

- Tips on how to contact and what to say to their mortgage loan servicer.
- Information on how to contact a HUD-approved housing counselor.

- Links to local foreclosure prevention resources, such as the grass-roots Save Our Homes task forces that have been established in about half of Ohio's counties.
- A model program for Ohio courts to use mediation in home foreclosure cases.

Besides the state offices already mentioned, Save the Dream includes the Department of Development, the Equal Justice Foundation, the Ohio Legal Assistance Foundation, the Ohio State Legal Services Association, the Coalition on Homelessness and Housing for Ohio, the Ohio Housing Finance Agency, the Legal Aid Society of Southwest Ohio, the Legal Aid Society of Cleveland, the Legal Aid Society of Columbus, Community Legal Aid Services, the Greater Dayton Volunteer Lawyers Project, Southeastern Ohio Legal Services, Legal Aid of Western Ohio, Advocates for Basic Legal Equality, the Legal Aid Society of Greater Cincinnati, and Northeast Ohio Legal Services.

Lawyers interested in volunteering should visit the OSBA Web site at: http://www.ohiobar.org/.

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Contacts:
Ohio Governor Ted Strickland:
Amanda Wurst
o/ 614-644-0957
m/ 614-832-7512

Ohio Supreme Court:
Chris Davey
614-387-9250
614-282-5465

Ohio Attorney General:
Leo Jennings
614-387-1108

Ohio Treasurer:
Leesa Brown
o/ 614-728-0449
m/ 614-915-2215

Ohio State Bar Association:
Ken Brown
o/ 614-487-4426
m/ 614-746-2457

Ohio Legal Assistance Foundation
Lisa Eschleman
614-752-2126

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III. Foreclosure Mediation Model Program

THE SUPREME COURT of OHIO

Foreclosure Mediation Program Model

Complete Foreclosure Mediation Program Model

Foreclosure Letter from Chief Justice Thomas J. Moyer to the Courts of Ohio

Foreclosure Mediation Program Model Documents, Forms, Resources, and Training

Foreclosure Mediator Survey Form

Dispute Resolution Section

Foreclosure Mediation Program Model

This eleven-step model is designed for courts to modify based upon their own needs, resources, and communities. Related documents and forms that are italicized can be downloaded. For samples of documents not linked, contact the Supreme Court's Dispute Resolution Section Manager, Jacqueline Hagerott at: hagerotj@sconet.state.oh.us or 614.387.9420.

It is recommended courts visit the Supreme Court's Web site periodically for additional updates, information, resources and best practices, which will continue to be added. If you have questions, need assistance implementing the model in your court, or would like a hard copy, contact the Dispute Resolution Section manager.

Step One: Building a Foreclosure Mediation Program

Stakeholders Meeting to Discuss Foreclosure Mediation

Schedule a meeting with stakeholders such as: judges; magistrates; lenders; attorneys for borrowers and lenders; community organizations; mediators; legal aid organization; clerk of court; county auditor, treasurer and/or commissioners; local social service agencies; community organizations such as churches, homeowner's and bank associations, etc.

Supreme Court Assistance: Implementation, Goals, and Quality Assessment

Identify and establish goals for the program and quality assessment including time lines for start up, training and other information located in the *Case Management Data and Quality Assessment Information Form.* It is recommended that this form be sent to the Dispute Resolution Section each quarter in order to share the success of foreclosure mediation in Ohio and offer case management and other program recommendations, if necessary.

You may also schedule a time for the Dispute Resolution Section manager to visit your court to assist in modifying the model to meet your needs and resources and to assist you in identifying and establishing these goals and assessment tools.

Training Contact the Dispute Resolution Section regarding the following:

► Foreclosure Mediation Training Requirements (required for all mediators doing foreclosure mediation in your court)
Basic Mediation
Uniform Mediation Act
Foreclosure Mediation

► Other Training for Judges/Magistrates, Court Personnel, Stakeholders (optional)

Pre-filed Settlements through Negotiation and Mediation / Marketing

Encourage the settlement of cases through negotiation between the borrower and lender rather than filing a foreclosure case by providing resources such as those listed in Step Four (below) to stakeholders via some or all of the following means: local court (include the court's Web site, if applicable); local bar association; law library; clerk of court; county auditor, treasurer and commissioners; local social service agencies; organizations such as churches and legal aid associations; and bank associations.

In compliance with the *R.C. Chapter 2710 Uniform Mediation Act*, stakeholders are encouraged to share success stories through the use of the court's mediation program, community mediation services, and/or private mediators.

Relevant Statutes and Rules

R.C. Chapter 2710 Uniform Mediation Act
R.C. Chapter 2303.201(E)(1) (Special Projects)
R.C. 2323.07 Sales of Foreclosed Properties
R.C. Chapter 2329 Execution Against Property
R.C. 5313.07 Proceeding for Foreclosure and Judicial Sale
Supreme Court of Ohio Rules of Superintendence - Rule 16. Mediation
Ohio Rules of Civil Procedure Rule 6. Time

Local Rule Providing for Mediation

Contact the Dispute Resolution Section for assistance in creating or modifying a local rule - See *Rule 16. Mediation: Local Rule Guide*. An alternate option is for the court to issue a *Standing Order for Foreclosure Mediation.*

Step Two: The Complaint is filed at the Clerk of Court's Office. This includes:

- ► Evidence of the Note
- ► Evidence of the Mortgage
- ► Judicial Title Report
- ► Evidence of the Assignment (or other evidence that the plaintiff is the holder or servicer of the note and mortgage if the plaintiff is not identified in the note and mortgage as the holder or servicer). Evidence of the Assignment should be:
  - ■ Filed with the Complaint; *OR*
    (Note: The requirement to file original documents with the complaint is currently in litigation)
  - ■ Include with the completed Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases; *OR*
  - ■ Included in a Court Order Requiring Mediation Services

Step Three: The Summons is sent with the complaint to the borrower.

The *Request for Foreclosure Mediation* and *Motion for Extension of Time to Answer or Otherwise Plead* may be enclosed with the Summons or available at the Clerk of Court's Office. If you elect to have the *Request for Foreclosure Mediation* and/or *Motion for Extension of Time to Answer or Other Plead* forms available at the Clerk of Court's Office it is recommended that you indicate this in the Summons.

Step Four: In addition to the Summons, provide additional information to borrowers such as: Letter to Borrowers, Mediation and Foreclosure Brochures, *Post Card*, and/or Mediation Glossary and Guide.

Step Five: Within 28 days after service of the Summons, the borrower files an Answer or a *Motion for Extension of Time to Answer or Otherwise Plead* and may send a *Request for Foreclosure Mediation* to the Mediation Department. The *Request for Foreclosure Mediation* form should NOT be sent to or filed with the Clerk of Court's Office.

Step Six: If the borrower sends a *Request for Foreclosure Mediation* to the Mediation Department, the Mediation Department sends a letter to the lender enclosing the *Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases* who completes the form and returns it to the Mediation Department within 14 calendar days from the postmarked date of the letter.

If the lender contacts the Mediation Department and requests mediation, the Mediation Department sends a letter to the lender enclosing the *Plaintiff/Lender's Mediation Questionnaire for Foreclosure* Cases who completes the form and returns it to the Mediation Department within 14 calendar days from the postmarked date of the letter. The Mediation Department also sends a letter to the borrower enclosing the *Request for Foreclosure Mediation* form. The borrower must complete the *Request for Foreclosure Mediation* form and return it to the Mediation Department within 14 calendar days from the postmarked day of the letter.

Step Seven: The Mediation Department reviews both the *Request for Foreclosure Mediation* from the borrower and the *Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases* to determine if mediation is appropriate.

Step Eight: The Mediation Department sends a status report to the court and the parties as to whether or not mediation will occur.

The judge/magistrate may or may not issue a *Court Order Requiring Mediation Services.* The mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute. *R.C. 2710.01(A).* A mediator will not force any party into accepting an agreement that is not mutually acceptable to all the parties.

► If the case is determined to be appropriate for mediation, the Mediation Department schedules the mediation within ___ days of the court order/referral to mediation and schedules and sends *Notice of Scheduled Mediation* to the Parties including instructions for the parties to attend in person with authority to settle (unless given prior permission by either the mediator or the court to participate by phone) and, to provide any other relevant information necessary for the mediation. A reminder such as an *E-mail Reminder* may also be sent to the parties to ensure attendance.

► If the case is not appropriate for mediation, the Mediation Department will send notice to the borrower and lender and the case continues on the trial docket.

Step Nine: Mediation session(s) takes place.

Mediation is facilitated in compliance with the *Revised Code Chapter 2710 Uniform Mediation Act*. Prior to the parties attending mediation, Mediation Departments may use resources such as *Mediation Intake Form* or a *Mediation Intake Information Sheet* to determine if additional steps need to be taken before the session.

► If a voluntary agreement is reached, the parties should memorialize the agreement that complies with *R.C. 2710.05 Exceptions to Privilege – Partial Admission of Nonprivileged Communication*. Acceptable methods to memorialize the agreement include: written agreement signed by all parties, agreement is read into the record by a court reporter, or agreement is tape recorded with all parties identifying themselves and indicating their consents to the agreement.

► If no voluntary agreement is reached, the case continues on the trial docket.

■ Confidentiality and Privilege: All mediation communications as defined in *R.C. 2710.01 Definitions* are privileged – *R.C. 2710.03 Mediation Communications Privileged.* Mediation Communications are confidential to the extent the parties agree – *R.C. 2710.07 Confidentiality of Mediation Communications*. It is important to maintain the confidentiality of the personal financial information of the borrower, offer(s) made by the borrower and/or lender, and discussions of the parties through an *Agreement to Mediate.*

■ If your court uses or decides to use contract mediators, the following resources are recommended:
Contract Mediator Cover Letter, Contract Mediator Agreement, and Contract Mediator Questionnaire

Step Ten: Outcome of Mediation Report is filed with the court by the Mediation Department in compliance with the *R.C. Section 2710.06 Communication or Disclosure by Mediator.*

Step Eleven: Quality Assessment – Qualitative and Quantitative

Implement evaluations forms and surveys including the: *Foreclosure Mediation Participant Survey*, *Contract Mediator Questionnaire* (if applicable), and *Case Management Data and Quality Assessment Information Form.* Send the *Case Management Data and Quality Assessment Information Form* to the Dispute Resolution Section ending each quarter: March 31, June 30, September 30, and December 31 using one of the methods listed on the bottom of the form.

Last Updated: February 14, 2008

OREGON

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 2676

B-Engrossed

Senate Bill 628
Ordered by the Senate June 11
Including Senate Amendments dated May 4 and June 11

Sponsored by Senator BONAMICI, Representative HOLVEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

{ - Requires mandatory mediation between trustee and grantor before sale to foreclose residential trust deed. Provides for notice and procedures for conducting mediation. Creates exception to notice requirement. - }

{ - Specifies rights of person that has lien or subsequent interest to trust deed if trustee fails to give that person notice. - }

{ - Sunsets on January 2, 2014. - }

{ + Changes contents of notice of default that lender must deliver to grantor before sale to foreclose residential trust deed. Requires lender to also deliver form by which grantor may request loan modification.

Specifies procedures by which sale to foreclose residential trust deed may occur if owner uses form to request loan modification. Modifies procedures one year after effective date of Act.

Sunsets on January 2, 2012. + }

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to residential property foreclosures; creating new provisions; amending ORS 86.750 and section 20, chapter 19, Oregon Laws 2008; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 20, chapter 19, Oregon Laws 2008, is amended to read:

{ + Sec. 20. + } (1) If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale is served or mailed, give notice under this section to the grantor by both first class and certified mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section, the notice must be in substantially the following form and printed in at least 14-point type:

NOTICE:
YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at _____ (address).

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called 'foreclosure. '

The amount you would have had to pay as of ___ (date) to bring your mortgage loan current was $___. The amount you must now pay to bring your loan current may have increased since that date.

By law, your lender has to provide you with details about the amount you owe, if you ask. You may call _____ (telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to get other details about the amount you owe. You may also get these details by sending a request by certified mail to: _____.

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD
IF YOU DO NOT TAKE ACTION:

Date and time: _____, 2___ at _____

Place: _____

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

1. You can pay the amount past due or correct any other default, up to five days before the sale.
2. You can refinance or otherwise pay off the loan in full anytime before the sale.
3. You can { - call _____ (name) at _____ (telephone number) to find out if your lender is willing to - } { + request that your lender + } give you more time or change the terms of your loan.
4. You can sell your home, provided the sale price is enough to pay what you owe.

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to _____.

{ + Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly payments or both. You can get information about possible loan modification programs by

contacting your lender at _____. If you can't reach your lender, you may contact the trustee at the telephone number at the bottom of this notice. If you have already entered into a loan modification with your lender, it is possible that you will not be able to modify your loan again unless your circumstances have changed. Your lender is not obligated to modify your loan. + }

{ + You may request to meet with your lender to discuss options for modifying your loan. During discussions with your lender, you may have the assistance of a lawyer, a housing counselor or another person of your choosing. To receive a referral to a housing counselor or other assistance available in your community, call this toll-free consumer mortgage foreclosure information number: _____. Many lenders participate in new federal loan modification programs. You can obtain more information about these programs at: _____. + }

{ + IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL BACK THE ENCLOSED 'MODIFICATION REQUEST FORM.' YOUR LENDER MUST RECEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN BELOW. + }

WARNING: You may get offers from people who tell you they can help you keep your property. You should be careful about those offers. Make sure you understand any papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations mentioned above before signing.

DATED: ___, 2___

Trustee name: _____ (print)

Trustee signature: _____

Trustee telephone number: _____

---

(2) The Department of Consumer and Business Services may adopt rules prescribing the format, font size and other physical characteristics of the notice form set forth in subsection (1) of this section. The department shall adopt rules specifying the { - statewide - } resource telephone contact numbers and website addresses the sender is to insert in completing the notice.

(3) When filling blanks in the notice form set forth in subsection (1) of this section, the sender of the notice shall include, stated in plain language:

(a) The amount of payment that was needed to bring the mortgage loan current as of the date stated in the notice; and

(b) One or more telephone numbers consisting of:

(A) A telephone number that will allow the grantor access during regular business hours to details regarding the grantor's loan delinquency and repayment information; and

(B) A telephone number that will allow the grantor access during regular business hours to person-to-person consultation with an individual authorized by the beneficiary to discuss the grantor's payment and loan term negotiation and modification options.

(4) Telephone numbers described in subsection (3) of this section must be toll-free numbers unless the beneficiary:

(a) Made the loan with the beneficiary's own money;

(b) Made the loan for the beneficiary's own investment; and

(c) Is not in the business of making loans secured by an interest in real estate.

(5) If the sender giving notice under subsection (1) of this section has actual knowledge that the grantor is not the occupant of the residential real property, the sender shall also give notice to the occupant of the property by both first class and certified mail with return receipt requested.

{ + (6) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The date must be 30 days after the date on which the trustee signs the notice. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification. + }

SECTION 2. { + Sections 3 and 3a of this 2009 Act are added to and made a part of ORS 86.705 to 86.795. + }

SECTION 3. { + (1) If a grantor returns the form identified in section 20 (6), chapter 19, Oregon Laws 2008, to the lender by the date specified on the form, the beneficiary or an agent of the beneficiary shall review the information the grantor provided in the form and, in good faith, shall process the grantor's request. The beneficiary or the beneficiary's agent within 30 days after receiving the form shall notify the grantor whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the 30-day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet with the grantor in person or shall speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the grantor requests the meeting, the beneficiary or the beneficiary's agent shall take reasonable steps to schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary or beneficiary's agent does not speak to or meet with the grantor if, within seven business days after the beneficiary or beneficiary's agent attempts to contact the grantor, the grantor does not respond.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affidavit described in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent shall describe how the beneficiary or the beneficiary's agent has complied with subsections (1) and (2) of this section.

(b) The trustee shall record the affidavit described in paragraph (a) of this subsection and send a copy of the affidavit to the Director of the Department of Consumer and Business Services before conducting a trustee's sale. If the trustee fails to send a copy of the affidavit to the director, the failure does

not affect title to the property subject to the loan.

(4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines in good faith, after considering the most current financial information the grantor provides, that the grantor is not eligible for a loan modification. + }

SECTION 3a. { + (1) If a grantor returns the form identified in section 20 (6), chapter 19, Oregon Laws 2008, to the lender by the date specified on the form, the beneficiary or an agent of the beneficiary shall review the information the grantor provided in the form and, in good faith, shall process the grantor's request. The beneficiary or the beneficiary's agent within 30 days after receiving the form shall notify the grantor whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the 30-day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet with the grantor in person or shall speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the grantor requests the meeting, the beneficiary or the beneficiary's agent shall take reasonable steps to schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary or beneficiary's agent does not speak to or meet with the grantor if, within seven business days after the beneficiary or beneficiary's agent attempts to contact the grantor, the grantor does not respond.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affidavit described in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent shall describe how the beneficiary or the beneficiary's agent has complied with subsections (1) and (2) of this section.

(b) The trustee shall record the affidavit described in paragraph (a) of this subsection.

(4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines in good faith, after considering the most current financial information the grantor provides, that the grantor is not eligible for a loan modification. + }

SECTION 4. Section 20, chapter 19, Oregon Laws 2008, as amended by section 1 of this 2009 Act, is amended to read:

{ + Sec. 20. + } (1) If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale is served or mailed, give notice under this section to the grantor by both first class and certified mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section, the notice must be in substantially the following form and printed in at least 14-point type:

NOTICE:
YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at _____ (address).

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called 'foreclosure. '

The amount you would have had to pay as of ___ (date) to bring your mortgage loan current was $___. The amount you must now pay to bring your loan current may have increased since that date.

By law, your lender has to provide you with details about the amount you owe, if you ask. You may call _____ (telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to get other details about the amount you owe. You may also get these details by sending a request by certified mail to: _____.

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD
IF YOU DO NOT TAKE ACTION:

Date and time: _____, 2___ at _____

Place: _____

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

1. You can pay the amount past due or correct any other default, up to five days before the sale.
2. You can refinance or otherwise pay off the loan in full anytime before the sale.
3. You can { - request that your lender - } { + call _____ (name) at _____ (telephone number) to find out if your lender is willing to + } give you more time or change the terms of your loan.
4. You can sell your home, provided the sale price is enough to pay what you owe.

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to _____.

{ - Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly payments or both. You can get information about possible loan modification programs by

contacting your lender at _____. If you can't reach your lender, you may contact the trustee at the telephone number at the bottom of this notice. If you have already entered into a loan modification with your lender, it is possible that you will not be able to modify your loan again unless your circumstances have changed. Your lender is not obligated to modify your loan. - }

{ - You may request to meet with your lender to discuss options for modifying your loan. During discussions with your lender, you may have the assistance of a lawyer, a housing counselor or another person of your choosing. To receive a referral to a housing counselor or other assistance available in your community, call this toll-free consumer mortgage foreclosure information number: _____. Many lenders participate in new federal loan modification programs. You can obtain more information about these programs at: _____. - }

{ - IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL BACK THE ENCLOSED 'MODIFICATION REQUEST FORM.' YOUR LENDER MUST RECEIVE THE FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN BELOW. - }

WARNING: You may get offers from people who tell you they can help you keep your property. You should be careful about those offers. Make sure you understand any papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations mentioned above before signing.

DATED: ___, 2___

Trustee name: _____ (print)

Trustee signature: _____

Trustee telephone number: _____

---

(2) The Department of Consumer and Business Services may adopt rules prescribing the format, font size and other physical characteristics of the notice form set forth in subsection (1) of this section. The department shall adopt rules specifying the resource telephone contact numbers and website addresses the sender is to insert in completing the notice.

(3) When filling blanks in the notice form set forth in subsection (1) of this section, the sender of the notice shall include, stated in plain language:

(a) The amount of payment that was needed to bring the mortgage loan current as of the date stated in the notice; and

(b) One or more telephone numbers consisting of:

(A) A telephone number that will allow the grantor access during regular business hours to details regarding the grantor's loan delinquency and repayment information; and

(B) A telephone number that will allow the grantor access during regular business hours to person-to-person consultation with an individual authorized by the beneficiary to discuss the grantor's payment and loan term negotiation and modification options.

(4) Telephone numbers described in subsection (3) of this section must be toll-free numbers unless the beneficiary:

(a) Made the loan with the beneficiary's own money;

(b) Made the loan for the beneficiary's own investment; and

(c) Is not in the business of making loans secured by an

interest in real estate.

(5) If the sender giving notice under subsection (1) of this section has actual knowledge that the grantor is not the occupant of the residential real property, the sender shall also give notice to the occupant of the property by both first class and certified mail with return receipt requested.

{ - (6) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The date must be 30 days after the date on which the trustee signs the notice. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification. - }

SECTION 5. ORS 86.750, as amended by section 1, chapter ____, Oregon Laws 2009 (Enrolled Senate Bill 239), is amended to read:

86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day the trustee conducts the sale.

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person attempting service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person attempting service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

(C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the third attempt, the person attempting service shall send a copy of the notice, bearing the word 'occupant' as the addressee, to the property address by first class mail with postage prepaid.

(c) Service on an occupant is deemed effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale.

(3) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated the following affidavits with respect to the notice of sale:

(a) An affidavit of mailing, if any;

(b) An affidavit of service, if any;

(c) An affidavit of service attempts and posting, if any; and

(d) An affidavit of publication.

(4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the

county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19, Oregon Laws 2008.

{ + (5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property is located an affidavit from the beneficiary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has complied with the provisions of section 3 (1) and (2) of this 2009 Act. + }

SECTION 5a. ORS 86.750, as amended by section 1, chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 239), and section 5 of this 2009 Act, is amended to read:

86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day the trustee conducts the sale.

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person attempting service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person attempting service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

(C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the third attempt, the person attempting service shall send a copy of the notice, bearing the word 'occupant' as the addressee, to the property address by first class mail with postage prepaid.

(c) Service on an occupant is deemed effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale.

(3) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated the following affidavits with respect to the notice of sale:

(a) An affidavit of mailing, if any;

(b) An affidavit of service, if any;

(c) An affidavit of service attempts and posting, if any; and

(d) An affidavit of publication.

(4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19, Oregon Laws 2008.

(5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property is located an affidavit from the beneficiary or the beneficiary's agent that states how the beneficiary or the beneficiary's agent has complied with the provisions of section { - 3 - } { + 3a + } (1) and (2) of this 2009 Act.

SECTION 6. ORS 86.750, as amended by section 1, chapter ____, Oregon Laws 2009 (Enrolled Senate Bill 239), and sections 5 and 5a of this 2009 Act, is amended to read:

86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day the trustee conducts the sale.

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person attempting service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person attempting service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

(C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the third attempt, the person attempting service shall send a copy of the notice, bearing the word 'occupant' as the addressee, to the property address by first class mail with postage prepaid.

(c) Service on an occupant is deemed effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale.

(3) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated the following affidavits with respect to the notice of sale:

(a) An affidavit of mailing, if any;

(b) An affidavit of service, if any;

(c) An affidavit of service attempts and posting, if any; and

(d) An affidavit of publication.

(4) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit of mailing with respect to the notice to the grantor required under section 20, chapter 19, Oregon Laws 2008.

{ - (5) On or before the date the trustee conducts the sale, the trustee shall file for recording in the official record of the county or counties in which the property is located an affidavit from the beneficiary or the beneficiary's agent that

states how the beneficiary or the beneficiary's agent has complied with the provisions of section 3a (1) and (2) of this 2009 Act. - }

SECTION 7. { + (1) Notwithstanding the purposes set forth in ORS 180.095, and except as provided in subsection (2) of this section, the Department of Justice shall use the proceeds of the State of Oregon's settlement with Countrywide Financial Corporation that are deposited into the Consumer Protection and Education Revolving Account to make grants, in consultation with the Housing and Community Services Department, to nonprofit entities to provide foreclosure relief services.

(2) The Department of Justice need not use the proceeds identified in subsection (1) of this section if sufficient funding for the purposes identified in subsection (1) of this section is available from another source. + }

SECTION 8. { + (1) Sections 3 and 3a of this 2009 Act and the amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by sections 1, 5 and 5a of this 2009 Act apply to a notice of sale sent on or after the 60th day following the effective date of this 2009 Act.

(2) Sections 3 and 3a of this 2009 Act and the amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by sections 1, 5 and 5a of this 2009 Act do not apply to property secured by a trust deed that a government agency holds for a loan the government agency funded through a government program. + }

SECTION 9. { + (1) Section 3a of this 2009 Act and the amendments to ORS 86.750 by section 5a of this 2009 Act become operative one year after the effective date of this 2009 Act.

(2) The amendments to ORS 86.750 and section 20, chapter 19, Oregon Laws 2008, by sections 4 and 6 of this 2009 Act become operative on January 2, 2012. + }

SECTION 10. { + (1) Section 3 of this 2009 Act is repealed one year after the effective date of this 2009 Act.

(2) Section 3a of this 2009 Act is repealed on January 2, 2012. + }

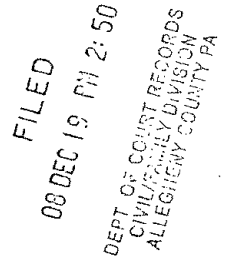
SECTION 11. { + This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage. + }

PENNSYLVANIA

(Alleghany, Bucks, Lackawanna, and Philadelphia Counties)

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ADMINISTRATIVE DOCKET

IN RE: RESIDENTIAL MORTGAGE FORECLOSURE PROGRAM	:	AD-2008-535-PJ
	:	Filed on Behalf of:
	:	The Honorable Joseph M. James



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

Plaintiff(s)

CASE NUMBER:

MG

Vs.

Defendant(s)

TYPE OF PLEADING:

CODE and CLASSIFICATION:

Certificate of Location:

I hereby certify that the location of the real estate is:

City, Borough or Township Ward

Address:

Filed on behalf of:

☐ Counsel of Record

☐ Individual, Pro Se

YOU MUST CHECK ONE SELECTION IN EACH BOX

_____ OWNER OCCUPIED RESIDENTIAL

_____ NON-OWNER OCCUPIED RESIDENTIAL

_____ COMMERCIAL

_____ OTHER (explain _____)

_____ FOUR UNITS OR LESS

_____ OVER FOUR UNITS

Name, Address and Telephone Number:

Attorney's State ID: _____

Attorney's Firm ID: _____

IF RESIDENTIAL: Name address and telephone number of representative of lending institution with authority to discuss this action.

"A"

URGENT NOTICE

Under a new Pilot Project of the Court of Common Pleas of Allegheny County:

You may be able to get help with Your Mortgage. Call the Save Your Home Hotline at 1 - 800 - 298 – 8020

You will be put in touch with a non-profit Housing Counselor **FREE OF CHARGE** to help you try to work out arrangements with your mortgage company.

The housing counselor will schedule a conference under the court's supervision to determine whether a work out can be arranged.

To get this help you must call the Hotline and go to a Housing Counselor. They will tell you what to do next.

Call the Hotline immediately. **Call 1-800-298-8020.**

Make this call to save your home! THIS PROJECT IS FREE

"B"

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

Plaintiff **No.**

v.

Defendant

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, pursuant to the terms of the ***Residential Mortgage Foreclosure Diversion Program*** it is hereby ORDERED and DECREED as follows:

1) The Defendant, assisted by the housing counselor, will file with the Department of Court Records, First Floor, City-County Building, a ***Certification of Participation*** form, as soon as possible after the Defendant has met with the counselor.

2) The housing counselor and the Defendant will explore available options which include: bringing the mortgage current, paying off the mortgage, proposing a repayment plan to bring the account current over time, agreeing to vacate in the near future in exchange for not contesting the matter and a monetary payment, offering the lender a deed in lieu of foreclosure, filing bankruptcy proceedings, paying the mortgage default over 60 months, request a loan modification, and filing an answer or motion to open or strike the judgment. At Defendant's request, the housing counselor shall promptly prepare and submit a written proposal for addressing the mortgage delinquency, a payment plan (together with the **Work Out Options & Counseling Form** and all available supporting financial information) or other resolution to Plaintiff's attorney, as soon as possible, but if practicable, at least ten (10) days before the date of the Conciliation Conference.

3) The Plaintiff shall evaluate and respond to Defendant's proposal prior to, or at the Conciliation Conference.

4) Unless an agreement has been reached prior to the Conciliation Conference, a representative of the Plaintiff or investor who has actual authority to modify mortgages, to enter into alternate payment agreements with the defendant, or otherwise resolve the action shall be present at the Conciliation Conference or shall be available telephonically. The failure of the Plaintiff or of a representative of the Plaintiff or investor with such authority to appear for the Conciliation Conference may result in the rescheduling of the Conciliation Conference, and/or the further postponement of the Sheriff Sale of the property.

5) A Conciliation Conference is scheduled for «_____» at «_____», in Courtroom _____, City-County Building, 414 Grant Street, Pittsburgh, PA 15219.

6) The failure of the Defendant to attend the Conciliation Conference shall result in the lifting of any stay.

BY THE COURT:

_____, J.

"C"

THE COURTS

Title 255--LOCAL COURT RULES

BUCKS COUNTY

In Re: Mortgage Foreclosure Diversion Program; Administrative Order No. 55

[39 Pa.B. 3321]
[Saturday, July 4, 2009]

And Now, this 5th day of June, 2009, in order to permit the implementation and execution of the Mortgage Foreclosure Diversion Program, it is hereby *Ordered* and *Decreed* that:

1. All Complaints for mortgage foreclosure of residential owner-occupied properties shall be accompanied by the following:

a. A Certification Cover Sheet which includes a certification that the mortgaged property is an owner-occupied residential property. (The Certification Cover Sheet is attached as Exhibit "A.")

b. An Urgent Notice, which shall be served on the Defendant along with the Complaint, directing the Defendant to contact a court-designated Hotline for assistance. (A Copy of the "Urgent Notice" is attached hereto as Exhibit "B.")

c. A Certificate of Service, in the form attached hereto as Exhibit "C."

2. Upon a request from Defendant to the Hotline for assistance and a conciliation conference, an Order for Conference shall be generated by the Court. (A sample copy of a Case Management Order is attached hereto as Exhibit "D.") The Order for Conference will be sent to all parties to the mortgage foreclosure action.

3. The entry of the Order for Conference shall include a stay of other proceedings in the case until at least 20 days following the conciliation conference.

4. As appropriate, any conciliation conference scheduled by the Court shall be conducted by judge *pro tem* designated by the Court.

5. Conciliation conference recommendation: At the conclusion of the conciliation conference, the conciliation moderator may issue a recommendation memorializing the results of the conference and scheduling future deadlines where appropriate. The Court may enter an order based on the recommendation, as appropriate.

6. This Administrative Order shall take effect thirty days from the date of publication in the *Pennsylvania Bulletin* and remain in effect until December 31, 2010, unless extended by the Court.

By the Court

SUSAN DEVLIN SCOTT,
President

COURT OF COMMON PLEAS OF BUCKS COUNTY
PENNSYLVANIA
CIVIL DIVISION LAW

Plaintiff	:	No.
	:	
v.	:	
	:	
Defendant	:	

CERTIFICATION REGARDING STATUS OF FORECLOSED PREMISES AS RESIDENTIAL AND OWNER OCCUPIED

Pursuant to the Administrative Order dated _____, 2009 dealing with the Residential Mortgage Foreclosure Diversion Program, I hereby certify that the premises at issue in this action known and numbered as:

Premises Address: _____
_____, PA _____

Check applicable box or boxes:

☐ is an owner occupied residential premises exposed to judicial sale to enforce a residential mortgage
☐ is not a residential premises within the meaning of the aforementioned order.

The undersigned verifies that the statements made herein are true and correct. I understand that false statements are made subject the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

_____
Signature of Plaintiff or Counsel for Plaintiff
(Address of Plaintiff or Counsel)

Exhibit A

URGENT NOTICE

Under a new Pilot Project of the Court of Common Pleas of Bucks County

You May be Able to Get Help to Save Your Home

Call the Save Your Home Hotline
Immediately at
1-866-760-8911

You will be put in touch with a Bucks County Housing Counselor. The Housing Counselor will assist you in trying to work out arrangements with your mortgage company. These services are FREE OF CHARGE.

Furthermore, if you are low income, you may be able to get free legal counsel. If you think you might be eligible, call the legal services helpline at 877-429-5994.

To get help, you must call the Hotline number above within the next TEN (10) days. They will tell you what to do next. Call the Hotline immediately. If you do not call the Hotline, you will not be able to get help under this Project to save your home.

MAKE THIS CALL TO SAVE YOUR HOME. THE PROJECT IS FREE.

1-866-760-8911

EXHIBIT B

COURT OF COMMON PLEAS OF BUCKS COUNTY
PENNSYLVANIA
CIVIL DIVISION – LAW

	Plaintiff	:	No.
		:	
v.		:	
		:	
	Defendant	:	

CERTIFICATE OF SERVICE

The undersigned verifies, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the attached Certification and Urgent notice were mailed to the Defendant(s) at their last known address and, if different, to the address of the premises subject to sale and to counsel of record if any, and to the owners of the noted premises via first class mail, as noted below:

NAME(S)

ADDRESS(ES)

Date: _____

Counsel for Plaintiff
(Address, Telephone number)

EXHIBIT C

COURT OF COMMON PLEAS OF BUCKS COUNTY
PENNSYLVANIA
CIVIL DIVISION LAW

Plaintiff	:	No.
	:	
v.	:	
	:	
Defendant	:	

ORDER FOR CONFERENCE

AND NOW, this _____ day of _____, 2009, pursuant to the terms of the Residential Mortgage Foreclosure Diversion Program, it is hereby ORDERED and DECREED as follows:

1. A Conciliation Conference is scheduled for _____, 2009, at _____ A.M./P.M. in Room _____ (address)
2. Scheduling of the Conference shall stay all further action on the Complaint until at least 20 days following the Conference.
3. Prior to the conference, the Housing Counselor and the Defendant will explore options to address the mortgage delinquency. At Defendant's request, the Housing Counselor and/or Pro Bono Legal Services shall promptly prepare and submit a written proposal for addressing the mortgage delinquency, payment and any and all supporting financial information to Plaintiff's attorney at least two weeks before the date of any scheduled Conciliation Conference.
4. The Plaintiff shall evaluate and respond to Defendant's proposal at the Conciliation Conference.

EXHIBIT D

5. The failure of the Defendant to attend the Conciliation Conference may result in the matter proceeding to judicial disposition whether by default judgment, Sheriff's sale or trial. A Defendant who does not attend the Conciliation Conference shall have 20 days following the conference date to file an answer to the complaint after which time any applicable stay against the Plaintiff shall be lifted.

6. A representative of the Plaintiff or investor who has actual authority to modify mortgages, to enter into alternative payment agreements with the Defendant, or otherwise resolve the action shall be present at the Conciliation Conference. The failure of the Plaintiff or of a representative of the Plaintiff or investor with such authority to appear for the Conciliation Conference may result in the rescheduling of the Conciliation Conference and/or the further postponement of the Sheriff's Sale of property upon proper application for stay by Defendant.

BY THE COURT,

_____
J.

EXHIBIT D

[Pa.B. Doc. No. 09-1190. Filed for public inspection July 2, 2009, 9:00 a.m.]

webmaster@PaBulletin.com

THE COURTS

Title 255--LOCAL COURT RULES

LACKAWANNA COUNTY

Repeal and Adoption of Lackawanna County Rules of Civil Procedure; No. 94 CV 102

[39 Pa.B. 2929]
[Saturday, June 13, 2009]

Order

And Now, this 27th day of May, 2009, it is hereby *Ordered and Decreed* that the attached Lackawanna County Rules of Civil Procedure are amended as follows:

1. Lacka. Co. R.C.P. 205.2(b), 1034, 1035.2 and 3129.1 are amended as reflected in the attached rules. The amended language of those rules appears in italics for ease of reference;

2. New Lacka. Co. R.C.P. 1143 and 1143.1 are adopted as reflected in the attached rules. The new language of those rules appears in italics for ease of reference;

3. In order to effectuate the new and amended rules attached hereto, new Form 1 (Civil Cover Sheet), Form 8 (Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co. R.C.P. 205.2(b) and 1143(a)), Form 9 (Request for Conciliation Conference), Form 10 (Case Management Order pursuant to Lacka. Co. R.C.P. 1143.1(c)), Form 11 (Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co. R.C.P. 1034 or 1035.2), Form 12 (Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co. R.C.P. 3129.1), Form 13 (Affidavit pursuant to Lacka. Co. R.C.P. 3129.1) and Form 14 (Lackawanna County Residential Mortgage Foreclosure Diversion Program Financial Worksheet) are adopted as reflected in the attached rules;

4. Pursuant to Pa.R.C.P. 239(c)(2)--(6), the attached Local Rules shall be disseminated and published in the following manner:

(a) Seven (7) certified copies of the attached Local Rules shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two (2) certified copies of the attached Local Rules and a computer diskette containing the text of the attached Local Rules in Microsoft Word format and labeled with the court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) One (1) certified copy of the attached Local Rules shall be filed with the Civil Procedural

Rules Committee;

(d) The attached Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Civil Division, and upon request and payment of reasonable costs of reproduction and/mailing, the Clerk of Judicial Records shall furnish to any requesting person a copy of the requested Local Rule(s); and

(e) A computer diskette containing the text of the attached Local Rules in Microsoft Word format and labeled with the court's name and address and computer file name shall be distributed to the Lackawanna Bar Association for publication on the web site of the Lackawanna Bar Association.

5. The attached amendments to Lacka. Co. R.C.P. 205.2(b), 1034, 1035.2 and 3129.1 and new adoptions of Lacka. Co. R.C.P. 1143 and 1143.1 shall become effective thirty (30) days after the date of their publication in the *Pennsylvania Bulletin* pursuant to Pa. R.C.P. 239(d).

By the Court

CHESTER P. HARHUT,
President Judge

Rule 205.2(b). Civil Cover Sheet.

No summons, complaint, pleading or other document used to commence a new civil action will be accepted for filing by the Clerk of Judicial Records unless it is accompanies by a duly completed Civil Cover Sheet in the format set forth in Form 1 of the Appendix. *In all residential mortgage foreclosure actions bearing the case code designation "RP/MF/RES" on the Civil Cover Sheet, no summons, complaint, pleading or other document used to commence a new residential mortgage foreclosure civil action will be accepted for filing by the Clerk of Judicial Records unless it is accompanied by a Notice of Residential Mortgage Foreclosure Diversion Program form in the format set forth in Form 8 of the Appendix.*

Rule 1034. Motion for Judgment on the Pleadings.

(a) A party filing a motion for judgment on the pleadings shall file the original motion for judgment on the pleadings with the Clerk of Judicial Records and shall deliver a copy of the same to the Court Administrator together with a praecipe for assignment in accordance with Lacka. Co. R.C.P. 211. The party filing a praecipe for assignment shall comply with the requirements of Lacka. Co. R.C.P. 211(b) prior to filing the praecipe for assignment. The filing of briefs, assignment of motion for judgment on the pleadings, and scheduling of oral argument, if necessary, shall be governed by Lacka. Co. R.C.P. 211(c)--(g).

(b) As a condition precedent to the filing of a motion for judgment on the pleadings in a residential mortgage foreclosure action involving a residential property which serves as the primary residence of the defendant/borrower, the plaintiff/lender must serve upon the defendant/borrower a "Notice of Residential Mortgage Foreclosure Diversion Program" in the format set forth in Form 11 of the Appendix, unless such a Notice has already been served pursuant to Lacka. Co. R.C.P. 1143. Following the service of the "Notice of Residential Mortgage Foreclosure Diversion Program" in the format prescribed in Form No. 11 of the Appendix, all proceedings shall be stayed for a period of sixty (60) days in order to afford the defendant/borrower an opportunity to qualify for participation in a court-supervised conciliation conference under Lacka. Co. R.C.P. 1143.1. Upon the expiration of that stay period, the plaintiff/lender in such a residential mortgage foreclosure action may proceed to file a motion for judgment on the pleadings in compliance with Lacka. Co. R.C.P. 1034(a).

(c) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the "Notice of Residential Mortgage Foreclosure Diversion Program" to be eligible to participate in a court-supervised conciliation conference under this Rule, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form No. 9 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the Notice of Residential Mortgage Foreclosure Diversion Program and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator.

(d) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form No. 10) as required by Lacka. Co. R.C.P. 1143.1(c). Conciliation conferences shall be scheduled and conducted in conformity with Lacka. Co. R.C.P. 1143.1(c)--(f).

Rule 1035.2. Motion for Summary Judgment.

(a) A party filing a motion for summary judgment shall file the original motion for summary judgment with the Clerk of Judicial Records and shall deliver a copy of the same to the Court Administrator together with a praecipe for assignment in accordance with Lacka. Co. R.C.P. 211. The party filing a praecipe for assignment shall comply with the requirements of Lacka. Co. R.C.P. 211(b) prior to filing the praecipe for assignment. The filing of briefs, assignment of motion for summary judgment and scheduling of oral argument, if necessary, shall be governed by Lacka. Co. R.C.P. 211(c)--(g).

(b) As a condition precedent to the filing of a motion for summary judgment in a residential mortgage foreclosure action involving a residential property which serves as the primary residence of the defendant/borrower, the plaintiff/lender must serve upon the defendant/borrower a "Notice of Residential Mortgage Foreclosure Diversion Program" in the format set forth in Form 11 of the Appendix, unless such a Notice has already been served pursuant to Lacka. Co. R.C.P. 1143. Following the service of the "Notice of Residential Mortgage Foreclosure Diversion Program" in the format prescribed in Form No. 11 of the Appendix, all proceedings shall be stayed for a period of sixty (60) days in order to afford the defendant/borrower an opportunity to qualify for participation in a court-supervised conciliation conference under Lacka. Co. R.C.P. 1143.1. Upon the expiration of that stay period, the plaintiff/lender in such a residential mortgage foreclosure action may proceed to file a motion for summary judgment in compliance with Lacka. Co. R.C.P. 1035.2(a).

(c) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the "Notice of Residential Mortgage Foreclosure Diversion Program" to be eligible to participate in a court-supervised conciliation conference under this Rule, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form No. 9 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the Notice of Residential Mortgage Foreclosure Diversion Program and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator.

(d) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form No. 10) as required by Lacka. Co. R.C.P. 1143.1(c). Conciliation conferences shall be scheduled and conducted in conformity with Lacka. Co. R.C.P. 1143.1(c)--(f).

Rule 1143. Commencement of Mortgage Foreclosure Action.

(a) In all residential mortgage foreclosure actions involving a residential property which serves as the primary residence of the defendant/borrower, the complaint must include a Civil Cover Sheet

bearing the case code designation "RP/MF/RES" as required by Lacka. Co. R.C.P. 205.2(b). In addition to the Civil Cover Sheet bearing the case code designation "RP/MF/RES," the complaint shall include a "Notice of Residential Mortgage Foreclosure Diversion Program" in the format set forth in Form 8 of the Appendix. Service of the complaint in such a residential mortgage foreclosure action shall include the "Notice of Residential Mortgage Foreclosure Diversion Program" advising the defendant/borrower of the action to be taken by the defendant/borrower within sixty (60) days of service of the complaint in order to participate in a court-supervised conciliation conference pursuant to Lacka. Co. R.C.P. 1143.1.

(b) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the "Notice of Residential Mortgage Foreclosure Diversion Program" to be eligible to participate in a court-supervised conciliation conference under Lacka. Co. R.C.P. 1143.1, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form 9 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the complaint and Notice of Residential Mortgage Foreclosure Diversion Program and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator.

(c) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form No. 10) as required by Lacka. Co. R.C.P. 1143.1(c). Conciliation Conferences shall be scheduled and conducted in conformity with Lacka. Co. R.C.P. 1143.1(c)--(f).

(d) Following the service of the "Notice of Residential Mortgage Foreclosure Diversion Program" (Form No. 8) in a residential mortgage foreclosure action bearing the case code designation "RP/MF/RES," all proceedings shall be stayed for a period of sixty (60) days in order to afford the defendant/borrower an opportunity to qualify for participation in a court-supervised conciliation conference.

Rule 1143.1. Conciliation Conference in Residential Mortgage Foreclosure Actions.

(a) The defendant/borrower shall be entitled to participate in a court-supervised conciliation conference with the plaintiff/borrower in all residential mortgage foreclosure actions in which the defendant/borrower: (i) has been served with a Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co. R.C.P. 205.2(b), 1034(b), 1035.2(b), 1143(a) or 3129.1 (c); (ii) has completed a financial worksheet in the format set forth in Form No. 14 of the Appendix in advance of the Conciliation Conference; and (iii) has filed and served a Request for Conciliation Conference. If the defendant/borrower in a residential mortgage foreclosure action has already participated in a conciliation conference, the plaintiff/lender or the defendant/borrower may request an additional conciliation conference for good cause shown by presenting a motion seeking the scheduling of a conciliation conference in accordance with Lacka. Co. R.C.P. 208.3(a).

(b) To be eligible to participate in a Conciliation Conference, a self-represented defendant/borrower who has been served with a Notice of Residential Mortgage Foreclosure Diversion Program under Lacka. Co. R.C.P. 205.2(b), 1034(b), 1035.2(b), 1143(a) or 3129.1(c) must contact and meet with one of the housing counselors identified in the Notice, complete a financial worksheet (Form No. 14), and file the Request for Conciliation Conference form within the time deadlines set forth in the applicable Notice. If the defendant/borrower is represented by counsel, the defendant/borrower need not contact and meet with one of the identified housing counselors as a condition precedent to requesting a Conciliation Conference, provided that counsel for the defendant/borrower completes the prescribed financial worksheet (Form No. 14), and files the Request for Conciliation Conference form within the time deadlines set forth in the applicable Notice. In the event that the defendant/borrower has not been served with a Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co. R.C.P. 205.2(b), 1034(b), 1035.2

(b), 1143(a) or 3129.1(c), the defendant/borrower in a residential mortgage foreclosure action shall have the right to participate in a court-supervised conciliation conference provided that the defendant/borrower completes a financial worksheet (Form No. 14), files a Request for Conciliation Conference form with the Clerk of Judicial Records and delivers a time-stamped copy to the Court Administrator.

(c) Upon receipt of a duly-filed Request for Conciliation Conference form, the Court Administrator shall issue a Case Management Order (Form No. 10) scheduling the matter for the next available Conciliation Conference list. The Case Management Order shall specify the date, time and place of the Conciliation Conference and shall be forwarded by the Court Administrator via ordinary mail to counsel for the parties and to any self-represented parties. At least fourteen (14) days prior to the date of the Conciliation Conference, the defendant/borrower must serve upon the plaintiff/lender or its counsel a copy of the "Lackawanna County Residential Mortgage Foreclosure Diversion Program Financial Worksheet" (Form No. 14) which has been completed by the defendant/borrower in compliance with Lacka. Co. R.C.P. 1143.1. The failure to do so will result in the removal of the case from the Conciliation Conference schedule and the termination of the temporary stay of proceedings under Lacka. Co. R.C.P. 1034(b), 1035.2(b), 1143(d) or 3129.1 (e).

(d) Conciliation Conferences in residential mortgage foreclosure actions will be conducted in the Jury Orientation Lounge, 1st Floor, Lackawanna County Court House at 10:00 AM on the last Friday of each month. In the event that the last Friday of a month falls on a holiday, the Conciliation Conference will be conducted on the preceding Friday unless another date is fixed by the Case Management Order.

(e) Conciliation Conferences will be conducted by the presiding judge unless a Special Master or Judge Pro Tempore is appointed by the Court to conduct the Conciliation Conference. The defendant/borrower and counsel for the parties must attend the Conciliation Conference in person and an authorized representative of the plaintiff/lender must either attend the Conciliation Conference in person or be available by telephone during the course of the Conciliation Conference. The representative of the plaintiff/lender who participates in the Conciliation Conference must possess the actual authority to reach a mutually acceptable resolution, and counsel for the plaintiff/lender must discuss resolution proposals with that authorized representative in advance of the Conciliation Conference. The Court in its discretion may require the personal attendance of the authorized representative of the plaintiff/lender at the Conciliation Conference.

(f) At the Conciliation Conference, the parties and their counsel shall be prepared to discuss and explore all available resolution options which include: bringing the mortgage current through a reinstatement; paying off the mortgage; proposing a forbearance agreement or repayment plan to bring the account current over time; agreeing to vacate in the near future in exchange for not contesting the matter and a monetary payment; offering the lender a deed in lieu of foreclosure; entering into a loan modification or a reverse mortgage; paying the mortgage default over sixty months; and the institution of bankruptcy proceedings.

Rule 3129.1. Notice of Sale. Real Property.

(a) Whenever a sale of real property is governed by Pa. R.C.P. 3129.1, all handbills, written notices, and publications shall include, as part of the location of the property, a street address.

(b) Street address is defined as the street number and street name where a number exists. Where no street number exists, the street address is defined as the land and/or portion of land between the nearest two street numbers and/or intersecting streets which do exist and the street name.

(c) If the real property sought to be sold pursuant to Pa. R.C.P. 3129.1 is a residential property

which serves as the primary residence of the defendant(s)/borrower(s), and unless the defendant (s)/borrower(s) has already been served with the required "Notice of Residential Mortgage Foreclosure Diversion Program" pursuant to Lacka. Co. R.C.P. 205.2(b), 1034(b), 1035.2(b) or 1143(a), the plaintiff/lender must serve a "Notice of Residential Mortgage Foreclosure Diversion Program" upon the defendant(s)/borrower(s) in the format set forth in Form No. 12 of the Appendix and file an "Affidavit Pursuant to Lacka. Co. R.C.P. 3129.1" in the format set forth in Form No. 13 attesting either that: (1) the defendant(s)/borrower(s) has not opted to participate in the "Residential Mortgage Foreclosure Diversion Program" within the time prescribed in the "Notice of Residential Mortgage Foreclosure Diversion Program;" or (2) the defendant(s)/borrower(s) has participated in a court-supervised conciliation conference, but the residential mortgage foreclosure claim has not been resolved and no further conciliation conferences are scheduled.

(d) The affidavit required by Lacka. Co. R.C.P. 3129.1(c) shall be filed with the Clerk of Judicial Records and a copy shall be delivered to the Sheriff's Office before any residential property may be listed for Sheriff's Sale. The affidavit required by this Rule shall be in the format set forth in Form No. 13 of the Appendix.

(e) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the "Notice of Residential Mortgage Foreclosure Diversion Program" to be eligible to participate in a court-supervised conciliation conference, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form 10 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the "Notice of Residential Mortgage Foreclosure Diversion Program" and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator. Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form No. 10) as required by Lacka. Co. R.C.P. 1143.1(c). Conciliation Conferences shall be scheduled and conducted in conformity with Lacka. Co. R.C.P. 1143.1(c)--(f).

FORM 1

Court of Common Pleas of Lackawanna County

Civil Cover Sheet

FOR CLERK OF JUDICIAL RECORDS USE ONLY
Docket Number

PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
PLAINTIFF'S NAME	DEFENDANT'S ADDRESS
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS

TOTAL NUMBER OF PLAINTIFFS	TOTAL NO. OF DEFENDANTS	COMMENCEMENT OF ACTION ☐ Complaint ☐ Petition Action ☐ Notice of Appeal ☐ Writ of Summons ☐ Transfer from other Jurisdiction
AMOUNT IN CONTROVERSY In Excess of Jurisdictional Amount* Yes ☐ No ☐	COURT PROGRAMS ☐ Arbitration ☐ Jury ☐ Nonjury ☐ Petition ☐ Mass Tort ☐ Motion Court Appeal ☐ Statutory Appeals ☐ Other	

CASE TYPE AND CODE (SEE INSTRUCTIONS)

STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)

REMARKS:

TO THE CLERK OF JUDICIAL RECORDS:
Please enter my appearance on behalf of Plaintiff.
Papers may be served at the address set forth below:

NAME OF PLAINTIFF'S ATTORNEY OR PRO SE PLAINTIFF	ADDRESS
PHONE NUMBER / FAX NUMBER	
SUPREME COURT IDENTIFICATION NO.	E-MAIL ADDRESS
SIGNATURE	DATE

LACKAWANNA COUNTY COURT OF COMMON PLEAS
CIVIL COVER SHEET INSTRUCTIONS

An attorney or pro se party filing a document commencing any type of civil action shall file a properly completed Civil Cover sheet. Copies of the Civil Cover Sheet shall be attached to service copies of the document commencing the action.

PARTIES

Regardless of the type of action, the initiating party or parties shall be designated as Plaintiff or Plaintiffs and the responding party or parties shall be designated as Defendant or Defendants. Names of individuals shall be listed as last name, first name, middle initial. Full names of agencies and corporations shall be provided. Spouses shall be listed as separate parties unless the claim of one spouse is limited to a claim for consortium in which case the designation, et ux. or et vir shall be used. Where there are more than three plaintiffs or defendants, a supplemental form listing the additional parties shall be attached to the Cover Sheet.

The section labeled "Remarks" is for procedural matters only. These may include such matters as related cases where consolidation might be advisable. Matters such as expected difficulty with service of process or the status of settlement discussions do not belong in this section.

CASE TYPE AND CODE DESIGNATION

FAM	Family Court	T	TORT/BF	Tort Bad Faith
FAM/CUST	Custody		TORT/WCP	Wrongful Use of Civil Process
FAM/DIV	Divorce		TORT/O	Other torts
MCT	Minor Court Appeal		NGL/MVA	Motor Vehicle Accident
LAG	Local Agency Appeal		NGL/NF	No-Fault Benefits
LAG/MVS	Motor Vehicle Suspension		NGL/PI	Personal Injury
LAG/ZB	Zoning Board Appeal		NGL/PRFM	Premises Liability
LAG/O	Other Agency Appeals		NGL/PROD	Product Liability
PCP/VAL	Validation of Tax Title		NGL/T1	Toxic Tort
PCP/TS	Tax Sale		NGL/O	Other Negligence Action
PCP/OBJ	Objection to Tax Sale	M	MLP/D	Dental Malpractice
PCP/PRIV	Petition to set aside private sale		MLP/L	Legal Malpractice
PCP/O	Other Proceedings commenced by Petition		MLP/M	Medical Malpractice
			MLP/O	Other Malpractice
CJ	Confession of Judgment		EQ	Equity
CLASS	Class Action	RR	REPL	Replevin
CNT	Contract cases		RP	Real Property
DECL	Declaratory Judgment		RP/EJ	Ejectment
COND/DT	Condemnation/Declaration of Taking		RP/QT	Quiet Title
TORT/AB	Assault & Battery		RP/MF/RES	Residential Mortgage Foreclosure
TORT/LS	Libel & Slander		RP/MF/O	Other Mortgage Foreclosure
TORT/FR	Fraud		RP/ML	Mechanic's Lien
			RP/PRT	Partition
			PP	Personal Property Actions

STATUTORY CAUSE OF ACTION

If the action is commenced pursuant to statutory authority, the specific statute must be identified with full citation.

PENDING CASES

Previously filed related cases must be identified by caption and docket number whether or not consolidated.

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. -CV-____

NOTICE OF RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM PURSUANT TO LACKA. CO. R.C.P. 205.2(b) and 1143(a)

You have been served with a foreclosure complaint that could cause you to lose your home.

If you own and live in the residential property which is the subject of this foreclosure action, you may be able to participate in a court-supervised conciliation conference in an effort to resolve this matter with your lender.

If you do not have an attorney, you must take the following steps to be eligible for a conciliation conference. First, within twenty (20) days of your receipt of this notice, you must contact a housing counselor at either the Neighborhood Housing Services of Lackawanna County (570) 558-2490 or the United Neighborhood Centers of Northeastern Pennsylvania (570) 343-8835 to schedule an appointment. Second, once you have contacted one of the housing counselors, you must promptly meet with that housing counselor within twenty (20) days of your telephone contact with them. During that meeting, you must provide the housing counselor with all requested financial information so that a loan resolution proposal can be prepared on your behalf. If you take these steps, the housing counselor will help you prepare and file a Request for Conciliation Conference with the Court. If you do so and a conciliation conference is scheduled, you will have an opportunity to meet with a representative of your lender in an attempt to work out reasonable arrangements with your lender before the mortgage foreclosure suit proceeds forward.

If you are represented by a lawyer, it is not necessary for you to contact one of the housing counseling agencies. However, you and your attorney must complete a financial worksheet in the format attached hereto so that you will be able to submit a loan resolution proposal to your lender. If you and your lawyer complete a financial worksheet within forty (40) days of your receipt of this Notice, your lawyer will be able to file a Request for Conciliation Conference on your behalf so that a conciliation conference can be scheduled. At that time, you and your lawyer will meet with a representative of your lender in an effort to work out reasonable arrangements with your lender.

IF YOU WISH TO SAVE YOUR HOME, YOU MUST ACT QUICKLY AND TAKE THE STEPS REQUIRED BY THIS NOTICE. THIS PROGRAM IS FREE.

Respectfully submitted:

_____ _____

Date [Signature of Counsel for Plaintiff]

Form 8 – Notice of Residential Mortgage Foreclosure Diversion Program Pursuant to Lacka. Co. R.C.P. 205.2(b) and 1143(a)

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. ___-CV-____

REQUEST FOR CONCILIATION CONFERENCE

Pursuant to the local rules governing the Lackawanna County Residential Mortgage Foreclosure Diversion Program, the undersigned hereby certifies as follows:

1. Defendant is the owner of the property which is the subject of this mortgage foreclosure action;

2. Defendant lives in the subject property which is defendant's primary residence;

3. Defendant has been served with a "Notice of Residential Mortgage Foreclosure Diversion Program" and has taken all of the steps required in that Notice to be eligible to participate in a court-supervised conciliation conference under Lacka. Co. R.C.P. 1143.1.

The undersigned verifies that the statements made herein are true and correct. I understand that false statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

_____ _____

Signature of Defendant/Defendant's Counsel Date

Form 3 Request for Conciliation Conference

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
	:	
	:	
	:	
Plaintiff(s)	:	CIVIL ACTION AT LAW
	:	
vs.	:	NO. _____ CV _____
	:	
	:	
Defendant(s)	:	
	:	

CASE MANAGEMENT ORDER
PURSUANT TO LACKA. CO. R.C.P. 1143.1(c)

AND NOW, the defendant/borrower in the above-captioned residential mortgage foreclosure action having filed a Request for Conciliation Conference form verifying that the defendant/borrower has complied with the local rule requirements for the scheduling of a Conciliation Conference under Lacka. Co. R.C.P. 1143.1, it is hereby ORDERED and DECREED that

1. The parties and their counsel are directed to participate in a court-supervised Conciliation Conference on ___ _____ at 9:30 AM in the Jury Orientation Lounge, 1st Floor, Lackawanna County Court House;

2. At least fourteen (14) days prior to the date of the Conciliation Conference, the defendant/borrower must serve upon the plaintiff/lender or its counsel a copy of the "Lackawanna County Residential Mortgage Foreclosure Diversion Program Financial Worksheet" (Form No. 24) which has been completed by the defendant/borrower in compliance with Lacka. Co. R.C.P. 1143.1. The failure to do so will result in the removal of this case from the Conciliation Conference schedule and the termination of the temporary stay of proceedings under Lacka. Co. R.C.P. 1034(b), 1035.2(b), 1143(d) or 3129.1(e).

3. The defendant/borrower and counsel for the parties must attend the Conciliation Conference in person and an authorized representative of the plaintiff/lender must either attend the Conciliation Conference in person or be available by telephone during the course of the Conciliation Conference. The representative of the plaintiff/lender who participates in the Conciliation Conference must possess the actual authority to reach a mutually acceptable resolution, and counsel for the plaintiff/lender must discuss resolution proposals with that authorized representative in advance of the Conciliation Conference. If the duly authorized representative of the plaintiff/lender is not available by telephone during the Conciliation Conference, the Court will schedule another Conciliation Conference and require the personal attendance of the authorized representation of the plaintiff/lender at the rescheduled Conciliation Conference.

4. At the Conciliation Conference, the parties and their counsel shall be prepared to discuss and explore all available resolution options which shall include: bringing the mortgage current through a reinstatement; paying off the mortgage; proposing a forbearance agreement or repayment plan to bring the account current over time; agreeing to tender a monetary payment and to vacate in the near future in exchange for not contesting the matter; offering the lender a deed in lieu of foreclosure; entering into a loan modification or a reverse mortgage; paying the mortgage default over sixty months; and the institution of bankruptcy proceedings.

5. All proceedings in this matter are stayed pending the completion of the scheduled conciliation conference.

BY THE COURT:

_____ J.

-2-

(Form 1 - Case Management Order scheduling Conciliation Conference)

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. -CV-____

NOTICE OF RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM PURSUANT TO LACKA. CO. R.C.P. 1034 OR 1035.2

You have been sued in this mortgage foreclosure action and your lender intends to promptly ask the court to enter judgment against you. The entry of judgment against you could cause you to lose your property in the near future.

If you own and live in the residential property which is the subject of this foreclosure action, you may be able to participate in a court-supervised conciliation conference in an effort to resolve this matter with your lender.

If you do not have an attorney, you must take the following steps to be eligible for a conciliation conference. First, within twenty (20) days of your receipt of this notice, you must contact a housing counselor at either the Neighborhood Housing Services of Lackawanna County (570) 558-2490 or the United Neighborhood Centers of Northeastern Pennsylvania (570) 343-8825 to schedule an appointment. Second, once you have contacted one of the housing counselors, you must promptly meet with that housing counselor within twenty (20) days of your telephone contact with them. During that meeting, you must provide the housing counselor with all requested financial information so that a loan resolution proposal can be prepared on your behalf. If you take these steps, the housing counselor will help you prepare and file a Request for Conciliation Conference with the Court. If you do so and a conciliation conference is scheduled, you will have an opportunity to meet with a representative of your lender in an attempt to work out reasonable arrangements with your lender before a judgment is entered against you.

If you are represented by a lawyer, it is not necessary for you to contact one of the housing counseling agencies. However, you and your attorney must complete a financial worksheet in the format attached hereto so that you will be able to submit a loan resolution proposal to your lender. If you and your lawyer complete a financial worksheet within forty (40) days of your receipt of this Notice, your lawyer will be able to file a Request for Conciliation Conference on your behalf so that a conciliation conference can be scheduled. At that time, you and your lawyer will meet with a representative of your lender in an effort to work out reasonable arrangements with your lender.

IF YOU WISH TO SAVE YOUR HOME, YOU MUST ACT QUICKLY AND TAKE THE STEPS REQUIRED BY THIS NOTICE. THIS PROGRAM IS FREE.

_____ _____

[Signature of Counsel for Plaintiff] Date

(Form 11 – Notice of Residential Mortgage Foreclosure Diversion Program Pursuant to Lacka. Co. 1034 or 1035.2)

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. ___-CV-____

NOTICE OF RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM PURSUANT TO LACKA. CO. R.C.P. 3129.1

A judgment has been entered against you in this mortgage foreclosure action and your property is about to be listed for Sheriff's Sale.

If you own and live in the residential property which is the subject of this foreclosure action, you may be able to have the sale of your residence postponed so that you can participate in a court-supervised conciliation conference in an effort to resolve this matter with your lender.

If you do not have an attorney, you must take the following steps to be eligible for a conciliation conference. First, within twenty (20) days of your receipt of this notice, you must contact a housing counselor at either the Neighborhood Housing Services of Lackawanna County (570) 558-2490 or the United Neighborhood Centers of Northeastern Pennsylvania (570) 343-8835 to schedule an appointment. Second, once you have contacted one of the housing counselors, you must promptly meet with that housing counselor within twenty (20) days of your telephone contact with them. During that meeting, you must provide the housing counselor with all requested financial information so that a loan resolution proposal can be prepared on your behalf. If you take these steps, the housing counselor will help you prepare and file a Request for Conciliation Conference with the Court. If you do so and a conciliation conference is scheduled, you will have an opportunity to meet with a representative of your lender in an attempt to work out reasonable arrangements with your lender before your home is listed for Sheriff's Sale.

If you are represented by a lawyer, it is not necessary for you to contact one of the housing counseling agencies. However, you and your attorney must complete a financial worksheet in the format attached hereto so that you will be able to submit a loan resolution proposal to your lender. If you and your lawyer complete a financial worksheet within forty (40) days of your receipt of this Notice, your lawyer will be able to file a Request for Conciliation Conference on your behalf so that a conciliation conference can be scheduled. At that time, you and your lawyer will meet with a representative of your lender in an effort to work out reasonable arrangements with your lender.

IF YOU WISH TO SAVE YOUR HOME, YOU MUST ACT QUICKLY AND TAKE THE STEPS REQUIRED BY THIS NOTICE. THIS PROGRAM IS FREE.

Respectfully submitted:

_____ _____

Date [Signature of Counsel for Plaintiff]

(Form 3129.1 Notice of Residential Mortgage Foreclosure Diversion Program effective as to LCCP 3129.1)

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. _____CV_____
	:	

AFFIDAVIT PURSUANT TO LACKA. CO. R.C.P. 3129.1

I, _____, counsel for plaintiff in the above action, do hereby certify that on_____, I served the "Notice of Residential Mortgage Foreclosure Diversion Program" upon defendants(s) or defendant's counsel and that:

☐ More than 60 days has elapsed since the service of the Notice, and to the best of my knowledge, information and belief, defendant has not opted to participate in the diversion program by taking the affirmative steps required by the Notice.

☐ Plaintiff(s) and defendant(s) have participated in a court-supervised conciliation conference, but the parties have been unable to resolve this matter and no further conciliation conferences have been scheduled.

Respectfully submitted

_____ _____

Date [Plaintiff's Counsel]

[Form 13 – Affidavit Pursuant to Lacka. Co. R.C.P. 3129.1]

Lackawanna County Residential Mortgage Foreclosure Diversion Program
Financial Worksheet

Date
Tracking #

BORROWER REQUEST FOR HARDSHIP ASSISTANCE

To complete your request for hardship assistance, your lender must consider your circumstances to determine possible options while working with your counseling agency. Please provide the following information to the best of your knowledge:

CUSTOMER/PRIMARY APPLICANT

Borrower name(s):
Loan Number:
Property Address:
City: State: Zip:
Is the property for sale? Yes [ ] No [ ] Listing date: Price: $
Realtor Name: Realtor Phone:
Borrower Occupied? Yes [ ] No [ ]
Mailing Address (if different):
City: State: Zip:
Phone Numbers: Home: Office:
Cell: Other:
Email:
# of people in household: How long?

CO-BORROWER

Mailing Address:
City: State: Zip:
Phone Numbers: Home: Office:
Cell: Other:
Email:
# of people in household: How long?

COUNSELOR INFORMATION

Counseling Agency:
Counselor:
Phone (Office): Fax:
Email:

First Mortgage Lender:
Type of Loan:
Loan Number: Date You Closed Your Loan:
Second Mortgage Lender:
Type of Loan:
Loan Number:

Total Mortgage Payments Amount: $ Included Taxes & Insurance:
Date of Last Payment:

(Page No. 1) - Lackawanna County Residential Mortgage Foreclosure Diversion Program Financial Worksheet

Primary Reason for Default:

Is the loan in Bankruptcy? Yes ☐ No ☐
If yes, provide names, location of court, case number & attorney:

Assets	Amount Owed:	Value:
Home:	$	$
Other Real Estate:	$	$
Retirement Funds:	$	$
Investments:	$	$
Checking:	$	$
Savings:	$	$
Other:	$	$

Automobile #1: Model: Year:
Amount owed: Value:
Automobile #2: Model: Year:
Amount owed: Value:
Other transportation (automobiles, boats, motorcycles): Model:
Year: Amount owed: Value

Monthly Income
Name of Employers:
1.
2.
3.
Additional Income Description (not wages):
1. monthly amount:
2. monthly amount:
Borrower Pay Days: Co-Borrower Pay Days:

Monthly Expenses: (Please only include expenses you are currently paying)

EXPENSE	AMOUNT	EXPENSE	AMOUNT
Mortgage		Food	
2nd Mortgage		Utilities	
Car Payment(s)		Condo/Neigh. Fees	
Auto insurance		Med. (not covered)	
Auto fuel/repairs		Other prop. payment	
Install. Loan Payment		Cable TV	
Child Support/Alim.		Spending Money	
Day/Child Care/Trav.		Other Expenses	

Amount Available for Monthly Mortgage Payments Based on Income & Expenses:

2

AUTHORIZATION

I/We, _____ _____ _____, authorize the above named agency to use/refer this information to my lender/servicer for the sole purpose of evaluating my financial situation for possible mortgage options. I/We understand that I/we am/are under no obligation to use the counseling services provided by the above named agency.

_____ _____ _____
Borrower Signature Date

_____ _____ _____
Co-Borrower Signature Date

Please forward this page along with the following information to lender:

- √ **Proof of income**
- √ **Past 2 bank statements**
- √ **Proof of any expected income for the last 45 days**
- √ **Copy of a current utility bill**
- √ **Letter explaining reason for delinquency and any supporting documentation (hardship letter)**
- √ **Listing agreement (if property is currently on the market)**

In an effort to evaluate all of the workout options available to you, a counselor staff will work with your lender(s) and servicing company to determine eligibility.

Lender's Contact (Name): _____ _____ Phone: _____

Non Profit Counselor Contact: _____ Phone: _____

HOUSING AFFORDABILITY WORKSHEET

Borrower Name: _____
Property Address: _____
Lender: _____ Loan #: _____
Arrears (principal,interest,escrows, no late fees): _____
Unpaid Loan Balance: _____
Interest Rate Now: _____ Type of Loan: _____

Current Financials:

Current P&I: $_____

Property Taxes: $_____

HO Insurance: $_____

PMI: $_____

Total Housing Debt: $_____

Total Monthly Debt: $_____
(from credit report)

Total Debt: $_____

Current Back End Ratio
Total Gross Income: $_____

Back End Ratio = $_____
(total monthly debt/gross income)

Proposed Resolution:

Future debt to income ratio: _____%

Total allowable debt: $_____
(.45 x gross income)

Total allow. housing debt: $_____
(subtract other debt on credit report)

Total allowable P&I: $_____
(subtract taxes, HOI, PMI)

Proposed Interest Rate – _____%

Fixed Rate for remaining term of loan.

Other proposed terms: _____.

4

[Pa.B. Doc. No. 09-1055. Filed for public inspection June 12, 2009, 9:00 a.m.]

webmaster@PaBulletin.com

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. ___-CV-____

NOTICE OF RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM PURSUANT TO LACKA. CO. R.C.P. 205.2(b) and 1143(a)

You have been served with a foreclosure complaint that could cause you to lose your home.

If you own and live in the residential property which is the subject of this foreclosure action, you may be able to participate in a court-supervised conciliation conference in an effort to resolve this matter with your lender.

If you do not have an attorney, you must take the following steps to be eligible for a conciliation conference. First, within twenty (20) days of your receipt of this notice, you must contact a housing counselor at either the Neighborhood Housing Services of Lackawanna County (570) 558-2490 or the United Neighborhood Centers of Northeastern Pennsylvania (570) 343-8835 to schedule an appointment. Second, once you have contacted one of the housing counselors, you must promptly meet with that housing counselor within twenty (20) days of your telephone contact with them. During that meeting, you must provide the housing counselor with all requested financial information so that a loan resolution proposal can be prepared on your behalf. If you take these steps, the housing counselor will help you prepare and file a Request for Conciliation Conference with the Court. If you do so and a conciliation conference is scheduled, you will have an opportunity to meet with a representative of your lender in an attempt to work out reasonable arrangements with your lender before the mortgage foreclosure suit proceeds forward.

If you are represented by a lawyer, it is not necessary for you to contact one of the housing counseling agencies. However, you and your attorney must complete a financial worksheet in the format attached hereto so that you will be able to submit a loan resolution proposal to your lender. If you and your lawyer complete a financial worksheet within forty (40) days of your receipt of this Notice, your lawyer will be able to file a Request for Conciliation Conference on your behalf so that a conciliation conference can be scheduled. At that time, you and your lawyer will meet with a representative of your lender in an effort to work out reasonable arrangements with your lender.

IF YOU WISH TO SAVE YOUR HOME, YOU MUST ACT QUICKLY AND TAKE THE STEPS REQUIRED BY THIS NOTICE. THIS PROGRAM IS FREE.

Respectfully submitted:

_____ _____

Date [Signature of Counsel for Plaintiff]

(Form 8 – Notice of Residential Mortgage Foreclosure Diversion Program Pursuant to Lacka. Co. R.C.P. 205.2(b) and 1143(a).

	:	IN THE COURT OF COMMON PLEAS
	:	OF LACKAWANNA COUNTY
Plaintiff(s)	:	
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	NO. ___-CV-____

NOTICE OF RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM PURSUANT TO LACKA. CO. 1034 OR 1035.2

You have been sued in this mortgage foreclosure action and your lender intends to promptly ask the court to enter judgment against you. The entry of judgment against you could cause you to lose your property in the near future.

If you own and live in the residential property which is the subject of this foreclosure action, you may be able to participate in a court-supervised conciliation conference in an effort to resolve this matter with your lender.

If you do not have an attorney, you must take the following steps to be eligible for a conciliation conference. First, within twenty (20) days of your receipt of this notice, you must contact a housing counselor at either the Neighborhood Housing Services of Lackawanna County (570) 558-2490 or the United Neighborhood Centers of Northeastern Pennsylvania (570) 343-8835 to schedule an appointment. Second, once you have contacted one of the housing counselors, you must promptly meet with that housing counselor within twenty (20) days of your telephone contact with them. During that meeting, you must provide the housing counselor with all requested financial information so that a loan resolution proposal can be prepared on your behalf. If you take these steps, the housing counselor will help you prepare and file a Request for Conciliation Conference with the Court. If you do so and a conciliation conference is scheduled, you will have an opportunity to meet with a representative of your lender in an attempt to work out reasonable arrangements with your lender before a judgment is entered against you.

If you are represented by a lawyer, it is not necessary for you to contact one of the housing counseling agencies. However, you and your attorney must complete a financial worksheet in the format attached hereto so that you will be able to submit a loan resolution proposal to your lender. If you and your lawyer complete a financial worksheet within forty (40) days of your receipt of this Notice, your lawyer will be able to file a Request for Conciliation Conference on your behalf so that a conciliation conference can be scheduled. At that time, you and your lawyer will meet with a representative of your lender in an effort to work out reasonable arrangements with your lender.

IF YOU WISH TO SAVE YOUR HOME, YOU MUST ACT QUICKLY AND TAKE THE STEPS REQUIRED BY THIS NOTICE. THIS PROGRAM IS FREE.

_____ _____

[Signature of Counsel for Plaintiff] Date

(Form 11 – Notice of Residential Mortgage Foreclosure Diversion Program Pursuant to Lacka. Co.1034 or 1035.2).

FIRST JUDICIAL DISTRICT OF PHILADELPHIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

JOINT GENERAL COURT REGULATION No. 2008-01
Residential Mortgage Foreclosure Diversion Pilot Program

The Court takes judicial notice that in 1983 and 2004, the Philadelphia Court of Common Pleas was called upon to issue stop-gap relief to a large number of residential homeowners who were facing the loss of their homes due to their inability to pay their mortgages. Relief was granted in the form of a temporary stay and postponements in the Sheriff Sale of foreclosed residential properties.

Mortgage Foreclosure actions recently filed in the Court of Common Pleas, as well as reliable data, establish that a mortgage foreclosure crisis, caused in part by "subprime" and "predatory lending" practices as well as rising interest rates, unemployment and underemployment, have negatively impacted a substantial number of homeowners causing an increasing number of residential mortgage foreclosures actions which are being filed and will be filed in the Court of Common Pleas requiring the expenditure of substantial judicial resources.

Pennsylvania Rules of Civil Procedures authorize the Court to implement case management programs designed to assist the Court and the litigants in the simplification of the issues involved, and to address such other matters which may aid in the timely and efficient disposition of the action. The within General Court Regulation adopts a ***Residential Mortgage Foreclosure Diversion Pilot Program*** which is designed to provide early Court intervention in residential owner occupied mortgage foreclosure cases which will assure timely determination of eligibility under various federal, state and local programs established to facilitate loan work-out and other solutions to permit residential homeowners, where possible, to retain their properties and permit lenders to move forward to the Sheriff Sale of the properties upon conclusion of the process established pursuant to this General Court Regulation.

1. **Cases Subject to Residential Mortgage Foreclosure Diversion Pilot Program.**

(a) All Mortgage Foreclosure cases involving owner-occupied residential properties which are subject to execution to enforce a residential mortgage must be scheduled for a Conciliation Conference, as provided in this General Court Regulation, before a real property can be sold at Sheriff Sale,. The term "residential premises" means real property located within the City and County of Philadelphia containing not more than four residential units and shall include a residential condominium unit or a residential co-op unit, occupied by an owner as the owner's principal residence.

(b) Cases involving premises which are not owner occupied, which are not residential, or which are not exposed to judicial sale to enforce a residential mortgage are not subject to the Conciliation Conference and may be sold by the Sheriff of Philadelphia as scheduled and advertised unless the sales are otherwise individually stayed or postponed.

2. **Conciliation Conference and Sheriff Sale.** Owner-occupied residential properties which are subject to execution to enforce a residential mortgage cannot proceed to Sheriff Sale unless a conciliation conference is held as provided in this General Court Regulation.

3. **Scheduling of the Conciliation Conference.** The Conciliation Conference shall be scheduled as follows:

(a) **Cases on the April 2008 and May 2008 Mortgage Foreclosure Sheriff Sale List.** The sale of all ***owner occupied residential premises*** exposed to judicial sale on April 1, 2008 to enforce a residential mortgage whose sale was postponed by the Sheriff of Philadelphia, as well as the sale of all ***owner occupied residential premises*** which are scheduled to be exposed to judicial sale to enforce a residential mortgage at the Sheriff Sale on May 6, 2008 are postponed until the Sheriff Sale scheduled for July 1, 2008 so that the Conciliation Conference required by this General Court Regulation can be held.

The Court will issue orders designed to identify owner-occupied residential properties, subject to execution to enforce a residential mortgage, which were listed for Sheriff Sale in April 2008 and May 2008 which are to be postponed to a specific date pending the scheduling of a Conciliation Conference and those cases which can proceed to Sheriff Sale on May 6, 2008.

When the owner-occupied residential properties subject to execution to enforce a residential mortgage have been identified, a case specific Case Management Order will be issued, scheduling a Conciliation Conference, as provided in this Regulation.

(b) **Cases Filed but not yet scheduled for Sheriff Sale.** The Court will issue orders designed to identify owner-occupied residential properties, subject to execution to enforce a residential mortgage.

When the owner-occupied residential properties subject to execution to enforce a residential mortgage have been identified, a case specific Case Management Order will be issued, scheduling a Conciliation Conference, as provided in this Regulation.

(c) **New Mortgage Foreclosure cases filed on or after July 7, 2008.** Any Mortgage Foreclosure Case commenced on or after July 7, 2008 which involves owner-occupied residential properties subject to execution to enforce a residential mortgage must be identified as Case Type "**3D – Mortgage Foreclosure – Owner Occupied Residential Premises**" on the Civil Cover Sheet. A Case Management Order will be administratively issued and provided to the Plaintiff upon the filing of the Mortgage Foreclosure action which must be served on the Defendant(s) as provided in Section 5. below.

4. **Case Management Order**. The Case Management Order shall schedule a conference within thirty (30) to forty-five (45) days after the filing of the Complaint for cases subject to Section 3.(c), and as soon as practicable for cases subject to Section 3. (a) and (b). As applicable, the Case Management Order shall, *inter alia*:

a. schedule a Conciliation Conference for a specific date, place and time;

b. require the attendance of the Defendant and the Plaintiff-Lender's Servicer (who may appear telephonically);

c. require the Defendant to call immediately upon receipt of the Case Management Order the **SAVE YOUR HOME PHILLY HOTLINE at** (215) 334-HOME and the Defendant-homeowner will be directed to a housing counseling agency;

d. require the Defendant to cooperate with the housing counseling agency, provide financial and employment information and complete loan resolution proposals and applications, as appropriate;

e. require the exchange of the information provided as required by subsection 4. d. to the Plaintiff – Lender representative;

f. authorize the Plaintiff to send the ten (10) day notice required by Pa.R. C. P. 237.1, if service is effectuated as permitted under the Civil Procedural Rules, but delay the request for the entry of a judgment by default until after the date of the Conciliation Conference; and

g. provide such other terms as may be necessary and appropriate.

5. **Service of the Case Management Order**. The Court shall serve the Case Management Order on all parties for cases subject to Section 3. (a) and (b). The Plaintiff shall serve the Case Management Order together with the Complaint or other initial process for cases subject to Section 3. (c).

6. **Conciliation Conference.**

a. **Presiding Officer:** As appropriate, the Conciliation Conference shall be conducted by a Civil Case Manager or other person designated by the Court, a *Judge Pro Tem[]* who possesses experience in the subject matter, or a judge of the Court of Common Pleas.

b. **Issues to be Addressed:** The following issues shall be addressed at the Conciliation Conference:

1. whether the Defendant is represented and if not represented, whether volunteer counsel may be available and appointed;

2. whether Defendant(s) met with a Housing Counseling Agency, as required;

3. whether the Housing Counseling Agency has prepared an assessment or report providing available loan work-out for the defendant;

4. Defendant's income and expense information;

5. Defendant's employment status;

6. Defendant's qualifications for any of the available work-out programs, upon review and application of guidelines established pursuant to this General Court Regulation;

7. assistance with preparation of work-out plans and required Court Orders, as appropriate;

8. the necessity of a subsequent Conciliation Conference;

9. whether the case may proceed to Sheriff Sale since there is no prospect of an amicable resolution; and

10. any other relevant issue.

c. **Defendant's Failure to Attend The Conference:** If a Defendant fails to appear for the mandatory Conciliation Conference, the requirement for a Conciliation Conference imposed by this Regulation may be deemed satisfied upon verification that the required notice was sent, and if so, an order will be issued authorizing the Plaintiff to proceed with the action.

7. **Case Management Order:** At the conclusion of the Case Management Conference, an appropriate Order shall issue memorializing the result of the Conciliation Conference.

8. **Duration of the Residential Mortgage Foreclosure Diversion Pilot Program.** Unless otherwise ordered the **Residential Mortgage Foreclosure Diversion Pilot Program** shall terminate on December 31, 2009.

This General Court Regulation is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. R. *51 and Pa.R.C.P. 212.3 and 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations; and copies shall be submitted to the Supreme Court Civil Procedural Rules Committee, the Administrative Offices of Pennsylvania Courts, the Legislative Reference Bureau and the Legal Communications, Ltd., *The Legal Intelligencer,* Jenkins Memorial Law Library and the Law Library for the First Judicial District.

BY THE COURT:
/s/ Honorable C. Darnell Jones, II
HONORABLE C. DARNELL JONES, II
President Judge, Court of Common Pleas
Date: April 16, 2008

BY THE COURT:
/s/ Honorable D. Webster Keogh
HONORABLE D. WEBSTER KEOGH,
Administrative Judge, Trial Division
Date: April 16, 2008

WISCONSIN

JEFFREY A. KREMERS
Chief Judge
Telephone: (414) 278-5116

DAVID A. HANSHER
Deputy Chief Judge
Telephone: (414) 278-5340

MAXINE A. WHITE
Deputy Chief Judge
Telephone: (414) 278-4482

BRUCE M. HARVEY
District Court Administrator
Telephone: (414) 278-5115

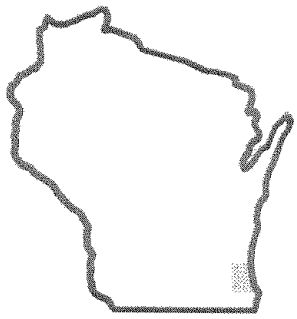
BETH BISHOP PERRIGO
Deputy District Court Administrator
Telephone: (414) 278-6026

STATE OF WISCONSIN

FIRST JUDICIAL DISTRICT

MILWAUKEE COUNTY COURTHOUSE
901 NORTH NINTH STREET, ROOM 609
MILWAUKEE, WISCONSIN 53233-1425

TELEPHONE (414) 278-5112
FAX (414) 223-1264



CHIEF JUDGE
DIRECTIVE
09-14

DATE: July 10, 2009

TO: All Judges, All Court Commissioners, District Court Administrator, Deputy District Court Administrator, County Executive, Clerk of Circuit Court, Corporation Counsel, Sheriff, District Attorney, City Attorney, Public Defender, Court Coordinators, Managing Court Reporter, CCAP, Legal Resource Center, IMSD, Facilities Management, Press

FROM: Chief Judge Jeffrey A. Kremers

RE: FORECLOSURE PROCEDURES

Effective July 22, 2009:

IT IS HEREBY DIRECTED that, until further order, in all foreclosure actions filed after the effective date of this order, the plaintiff shall attach to the summons and complaint served on the defendant/home owner the attached forms.

The forms, which shall be printed on pink paper, will be available at the Clerk of Courts office or can be downloaded from the Milwaukee County Court Services website.

Dated at Milwaukee, Wisconsin, this 10th day of July, 2009.

Jeffrey A. Kremers
Chief Judge

JAK:bjs

Attachment

RELATED PENDING LEGISLATION

REED BILL/S. 1731

(PENDING)

S.1731

Preserving Homes and Communities Act of 2009 (Introduced in Senate)

SECTION 1. SHORT TITLE.

This Act may be cited as the `Preserving Homes and Communities Act of 2009'.

SEC. 2. LOAN MODIFICATION REQUIREMENTS.

(a) Definitions- In this section--

(1) the term `covered mortgagee' means--

(A) a mortgagee under a federally related mortgage loan; and

(B) the agent of a mortgagee under a federally related mortgage loan;

(2) the term `covered mortgagor' means an individual who is a mortgagor under a federally related mortgage loan--

(A) made by a covered mortgagee;

(B) secured by the principal residence of the mortgagor; and

(C) on which the mortgagor cannot make payments due to financial hardship, as determined by the Secretary;

(3) the term `federally related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602);

(4) the term `home loan modification protocol' means a home loan modification protocol that is developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary;

(5) the term `qualified loan modification' means a modification to the terms of a mortgage agreement between a covered mortgagee and a covered mortgagor that is made pursuant to a determination by the covered mortgagee using a home loan modification protocol that a modification would produce a greater net present value than foreclosure to--

(A) the covered mortgagee; or

(B) in the aggregate, all persons that hold an interest in the mortgage agreement; and

(6) the term `Secretary' means the Secretary of Housing and Urban Development.

(b) Loan Modification Required-

(1) IN GENERAL- A covered mortgagee may not initiate or continue a foreclosure proceeding against a covered mortgagor that is otherwise authorized under State law unless--

(A) the covered mortgagee has determined whether the covered mortgagor is eligible for a qualified loan modification;

(B) in the case of a covered mortgagor who the covered mortgagee determines is eligible for a qualified loan modification, the covered mortgagee has offered a qualified loan modification to the covered mortgagor; and

(C) in the case of a covered mortgagor who the covered mortgagee determines is not eligible for a qualified loan modification, the covered mortgagee has made available to the covered mortgagor the note, deed of trust, or any other document necessary to establish the right of the mortgagee to foreclose on the mortgage.

(2) NO WAIVER OF RIGHTS- A covered mortgagee may not require a covered mortgagor to waive any right of the covered mortgagor as a condition of making a qualified loan modification.

(3) SALE OF REAL PROPERTY SECURING MORTGAGE-

(A) SALE- A covered mortgagee may not sell the real property securing the mortgage of a covered mortgagor unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(B) ACTION BY PURCHASER- A person that purchases from a covered mortgagee the real property securing the mortgage of a covered mortgagor may not recover possession of the real property unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(C) CERTIFICATION STANDARDS- The Secretary shall establish minimum standards for the certification required under this paragraph.

(4) DEFENSE TO FORECLOSURE- Failure to comply with this subsection shall be a defense to foreclosure.

(5) RULE OF CONSTRUCTION- Nothing in this subsection may be construed to prevent a covered mortgagee from offering or making a loan modification with a lower payment, lower interest rate, or principal reduction beyond that required by a modification made using a home loan modification protocol with respect to a covered mortgagor.

(c) Fees Prohibited-

(1) LOAN MODIFICATION FEES PROHIBITED- A covered mortgagee may not charge a fee to a covered mortgagor for carrying out the requirements under subsection (b).

(2) FORECLOSURE-RELATED FEES-

(A) IN GENERAL- Except as provided in subparagraph (B), a mortgagee may not charge a foreclosure-related fee to a mortgagor before--

(i) the mortgagee has made a determination under subsection (b)(1); and

(ii) the mortgage has entered the foreclosure process.

(B) DELINQUENCY FEES- A mortgagee may charge a delinquency fee for late payment by the mortgagor.

(3) FEES NOT IN CONTRACT- A mortgagee may charge to a mortgagor only such fees as have been specified in advance by the mortgage agreement.

(4) FEES FOR EXPENSES INCURRED- A mortgagee may charge a fee to a mortgagor only for services actually performed by the mortgagee or a third party in relation to the mortgage agreement. For purposes of this paragraph, the term `third party' does not include an affiliate or subsidiary of the mortgagee.

(5) PENALTY- The Secretary shall collect from any mortgagee that charges a fee in violation of this subsection an amount equal to $6,000 for each such fee.

(d) Regulations- Not later than 3 months after the date of enactment of this Act, the Secretary shall issue by notice any requirements to carry out this section. The Secretary shall subsequently issue, after notice and comment, final regulations to carry out this section.

SEC. 3. GRANTS TO STATES TO ASSIST HOMEOWNERS IN DEFAULT.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following:

`(g) Grants to States To Assist Homeowners in Default-

`(1) DEFINITIONS- In this subsection--

`(A) the term `eligible agency' means a State housing finance agency or an agency designated by the State as an eligible agency;

`(B) the term `eligible homeowner' means a mortgagor who--

`(i) is a permanent resident of the State in which the principal residence of the mortgagor is located;

`(ii) agrees to seek counseling from a counseling agency approved by the Secretary if the eligible homeowner receives a loan or grant made using funds under this subsection;

`(iii) is suffering from financial hardship which is unexpected or due to circumstances beyond the control of the mortgagor;

`(iv) is unable to correct any delinquency on any amounts past due on the home loan of such mortgagor within

a reasonable time without financial assistance;

`(v) has requested a loan modification from the mortgagee;

`(vi) is unable to make full payment on any home loan payment due for all liens within the 30-day period following the date of the application by the mortgagor for a loan or grant using funds under this subsection;

`(vii) the eligible agency determines has a reasonable probability of resuming full payments due for all liens on the mortgage of such mortgagor not later than 15 months after the date on which the mortgagor receives a loan or grant using funds under this subsection; and

`(viii) has not previously received a loan or grant using funds under this subsection; and

`(C) the term `mortgagor' means a mortgagor under a mortgage--

`(i) secured by a 1- to 4-family owner-occupied residence (including a 1-family unit in a condominium project and a membership interest and occupancy agreement in a cooperative housing project) that is used as the principal residence of the mortgagor;

`(ii) with an interest rate that does not exceed the prime rate of interest at the time of loan origination, as such prime rate is determined by not less than 75 percent of the 30 largest depository institutions in the United States; and

`(iii) for an amount that does not exceed the conforming loan limit for conventional mortgages, as determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)).

`(2) GRANT PROGRAM ESTABLISHED- The Secretary shall award grants to eligible agencies, to enable eligible agencies to provide--

`(A) 1-time emergency grants or subsidized loans to eligible homeowners to assist such eligible homeowners in satisfying any amounts past due on their home loans;

`(B) grants or subsidized loans to eligible homeowners for a specified number of future mortgage payments by the eligible homeowners; and

`(C) stipends of not more than $1,500 to assist with relocation expenses for homeowners not eligible for the program.

`(3) ADDITIONAL SERVICES PROVIDED BY ELIGIBLE AGENCY- An eligible agency that receives a grant under this subsection shall provide--

`(A) a readily accessible source for information on, and referral to, public services available to assist a homeowner who is in default on their home loan;

`(B) a homeowner with referrals to counseling agencies approved by the Department of Housing and Urban Development that may be able to assist that homeowner, if that homeowner is in default on their home loan;

`(C) information to homeowners on available community resources relating to homeownership, including--

`(i) public assistance or benefits programs;

`(ii) mortgage assistance programs, including programs that help homeowners prepare documents for loan modification applications;

`(iii) home repair assistance programs;

`(iv) legal assistance programs;

`(v) utility assistance programs;

`(vi) food assistance programs; and

`(vii) other Federal, State, or local government funded social services; and

`(D) staff who--

`(i) are able to conduct a brief assessment of the situation of a homeowner; and

`(ii) based on such assessment, make appropriate referrals to, and provide application information regarding, programs that can provide assistance to such homeowner.

`(4) FORMULA- Not later than 3 months after the date of enactment of the Preserving Homes and Communities Act of 2009, the Secretary shall develop a formula for the award of funds under this subsection that includes the following

factors:

`(A) The population of the State, as determined by the Bureau of the Census in most recent estimate of the resident population of the State.

`(B) The rate of mortgages in the State that are delinquent more than 90 days.

`(C) The ratio of foreclosures to owner-occupied households in the State.

`(D) The change, if any, in the rate of unemployment in the State between 2007 and 2008.

`(5) PROGRAM REQUIREMENTS-

`(A) SELECTION CRITERIA-

`(i) IN GENERAL- Each eligible entity that receives a grant under this subsection shall develop selection criteria for eligible homeowners seeking a grant or subsidized loan under this subsection.

`(ii) INCOME REPORTING- A mortgagor that receives a grant or subsidized loan under this subsection shall be required, in accordance with criteria prescribed by the eligible agency, to report any increase in income.

`(B) LOAN REQUIREMENTS-

`(i) INTEREST RATE- Any loan made using a grant under this subsection shall carry a simple annual percentage rate of interest which shall not exceed the prime rate of interest, as such prime rate is determined from time to time by not less than 75 percent of the 30 largest depository institutions in the United States.

`(ii) COMPOUND INTEREST PROHIBITED- Interest on the outstanding principal balance of any loan under this subsection shall not compound.

`(iii) BALANCE DUE-

`(I) IN GENERAL- The principal of any loan made under this paragraph, including any interest accrued on such principal, shall not be due and payable unless the real property securing such loan is sold or transferred.

`(II) DEPOSIT OF BALANCE DUE- If an event described in subclause (I) occurs, the principal of any loan made under this subsection, including any interest accrued on such principal, shall immediately become due and payable to the eligible agency from which the loan originated.

`(iv) PREPAYMENT- Any eligible homeowner who receives a loan using a grant made under this subsection may repay the loan in full, without penalty, by lump sum or by installment payments, at any time prior to the loan becoming due and payable.

`(v) MAXIMUM AMOUNT- The amount of any loan to any 1 eligible homeowner under this subsection may not exceed 20 percent of the original mortgage amount borrowed by the eligible homeowner.

`(vi) SUBORDINATION- Any loan made using a grant under this subsection will be subordinated to any refinancing of the first mortgage, any preexisting subordinate financing, any purchase money mortgage, or subordinated for any other reason, as determined by the eligible agency.

`(6) SEPARATE ACCOUNT-

`(A) SEPARATE ACCOUNT- An eligible agency that receives a grant under this subsection shall establish a separate account in which to hold amounts received under this subsection.

`(B) REPAYMENT OF LOANS- Any amounts repaid on a subsidized loan made under this subsection shall be deposited in the account established under subparagraph (A).

`(C) OTHER FUNDING- Amounts donated or otherwise directed to be used for purposes of this subsection may be deposited in the account established under subparagraph (A) to help capitalize such account.

`(7) USE OF GRANT FUNDS-

`(A) IN GENERAL- Subject to subparagraph (B), any amounts made available for purposes of this subsection may be used only for the purposes described in paragraph (2).

`(B) EXCEPTION FOR ADMINISTRATIVE COSTS- An eligible agency may use not more than 5 percent of any funds received under this subsection for administrative costs relating to activities carried out under paragraph (2).

`(8) EXISTING LOAN FUNDS- Any eligible agency with a previously existing fund established to make loans to assist homeowners in satisfying any amounts past due on their home loan or for future payments may use funds appropriated for purposes of this subsection for that existing loan fund, even if the eligibility, application, program, or use requirements for that loan program differ from the eligibility, application, program, and use requirements of this subsection, unless such use

is expressly determined by the Secretary to be inappropriate.

`(9) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this section--

`(A) $6,375,000,000 for fiscal year 2010; and

`(B) such sums as may be necessary for each of fiscal years 2011 through 2013.'.

SEC. 4. MEDIATION INITIATIVES.

(a) Definitions- In this section--

(1) the term `mortgagee' includes the agent of a mortgagee; and

(2) the term `Secretary' means the Secretary of Housing and Urban Development.

(b) Grant Program Established- The Secretary shall establish a grant program to make competitive grants to State and local governments to establish mediation programs that assist mortgagors facing foreclosure.

(c) Mediation Programs- A mediation program established using a grant under this section shall--

(1) require participation in the program by--

(A) any mortgagee that initiates a foreclosure proceeding; and

(B) any mortgagor who is subject to a foreclosure proceeding;

(2) require any mortgagee or mortgagor required to participate in the program to make a good faith effort to resolve issues relating to foreclosure proceedings through mediation;

(3) if mediation is not made available to the mortgagor before a foreclosure proceeding is initiated, allow the mortgagor to request mediation at any time before a foreclosure sale;

(4) provide for--

(A) supervision by a State court (or a State court in conjunction with an agency or department of a State or local government) of the mediation program;

(B) selection and training of neutral, third-party mediators by a State court (or an agency or department of the State or local government);

(C) penalties to be imposed by a State court, or an agency or department of a State or local government, if a mortgagee fails to comply with an order to participate in mediation; and

(D) consideration by a State court (or an agency or department of a State or local government) of recommendations by a mediator relating to penalties for failure to fulfill the requirements of the mediation program;

(5) require that each mortgagee that participates in the mediation program make available to the mortgagor, before and during participation in the mediation program, documentation of--

(A) a loan modification calculation or net present value calculation made by the mortgagee in relation to the mortgage using a home loan modification protocol--

(i) developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary; or

(ii) approved by the Secretary;

(B) the loan origination, including any note, deed of trust, or other document necessary to establish the right of the mortgagee to foreclose on the mortgage;

(C) any pooling and servicing agreement that the mortgagee believes prohibits a loan modification;

(D) the payment history of the mortgagor and a detailed accounting of any costs or fees associated with the account of the mortgagor; and

(E) the specific alternatives to foreclosure considered by the mortgagee, including loan modifications, workout agreements, and short sales;

(6) prohibit a mortgagee from shifting the costs of participation in the mediation program, including the attorney's fees of the mortgagee, to a mortgagor;

(7) provide that--

(A) any holder of a junior lien against the property that secures a mortgage that is the subject of a mediation--

(i) be notified of the mediation; and

(ii) be permitted to participate in the mediation; and

(B) any proceeding initiated by a holder of a junior lien against the property that secures a mortgage that is the subject of a mediation be stayed pending the mediation;

(8) provide information to mortgagors about housing counselors approved by the Secretary; and

(9) be free of charge to the mortgagor and mortgagee.

(d) Recordkeeping- A State or local government that receives a grant under this section shall keep a record of the outcome of each mediation carried out under the mediation program, including the nature of any loan modification made as a result of participation in the mediation program.

(e) Targeting- A State that receives a grant under this section may establish--

(1) a State-wide mediation program; or

(2) a mediation program in a specific locality that the State determines has a high need for such program due to--

(A) the number of foreclosures in the locality; or

(B) other characteristics of the locality that contribute to the number of foreclosures in the locality.

(f) Federal Share- The Federal share of the cost of a mediation program established using a grant under this section may not exceed 50 percent.

(g) Authorization of Appropriations- There are authorized to be appropriated to carry out this section--

(1) $80,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for each of fiscal years 2011 through 2013.

SEC.

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S. 1731, The Preserving Homes and Communities Act of 2009

S. 1731 would require certain mortgagees to make loan modifications, to establish a grant program for State and local government mediation programs, to create databases on foreclosures.

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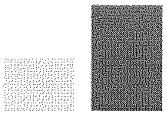

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S.1731

Preserving Homes and Communities Act of 2009 (Introduced in Senate)

SEC. 5. OVERSIGHT OF PUBLIC AND PRIVATE EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) Definitions- In this section--

(1) the term `heads of appropriate agencies' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Director of the Office of Thrift Supervision, and a representative of State banking regulators selected by the Secretary of Housing and Urban Development;

(2) the term `mortgagee' means--

[+] FEEDBACK

(A) an original lender under a mortgage;

(B) any servicers, affiliates, agents, subsidiaries, successors, or assignees of an original lender; and

(C) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;

(3) the term `Secretary' means the Secretary of Housing and Urban Development; and

(4) the term `servicer' means any person who collects on a home loan, whether such person is the owner, the holder, the assignee, the nominee for the loan, or the beneficiary of a trust, or any person acting on behalf of such person.

(b) Monitoring of Home Loans-

(1) IN GENERAL- The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor--

(A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures to better understand other critical aspects of the mortgage market; and

(B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.

(2) REPORT TO CONGRESS- Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that--

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary--

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) National Database on Defaults and Foreclosures-

(1) IN GENERAL- The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that--

(A) provide information to Federal regulatory agencies on--

(i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;

(ii) the factors associated with such higher rates; and

(iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and

(B) provide information to Federal, State, and local governments on loans, defaults, foreclosure initiations, foreclosure completions, and sheriff sales that--

(i) is not otherwise readily available;

(ii) would allow for a better understanding of local, regional, and national trends in delinquencies, defaults, and foreclosures; and

(iii) helps improve public policies that reduce defaults and foreclosures.

(2) CONSIDERATIONS- In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access to information obtained under subsection (d).

(3) REPORT TO CONGRESS ON NATIONAL DATABASE- Not later than 12 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains--

(A) the recommendations developed under paragraph (1); and

(B) an estimate of the cost of maintaining the database described in paragraph (1).

(d) Provision of Data-

(1) DATA REPORT REQUIRED- Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in a calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.

(2) CONTENTS OF REPORT- Each report submitted under paragraph (1) shall contain data that--

(A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including--

(i) the year of origination;

(ii) the agency code of the originator;

(iii) the respondent identification number of the originator; and

(iv) the identifying number for the loan;

(B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--

(i) the loan-to-value ratio at the time of origination for each mortgage on the property;

(ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and

(iii) any other loan or loan underwriting characteristics determined by the Secretary to be necessary in order to meet the requirements of paragraph (1) and that are not already available to the Secretary through a national mortgage database;

(C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--

(i) whether such home loan was in delinquency at any point in such 12-month period; and

(ii) whether any foreclosure proceeding was initiated on such home loan during such 12-month period;

(D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a foreclosure proceeding was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

(E) include information relating to foreclosures, including--

(i) the date of all foreclosures initiated by the mortgagee or servicer; and

(ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure proceedings were initiated;

(F) for a home loan that is in foreclosure, include information on all actions, including loan modifications, taken to resolve the problem that led to the initiation of foreclosure proceedings and all actions undertaken prior to initiation of a foreclosure proceeding to resolve a delinquency or default;

(G) identify each home loan for which a foreclosure proceeding was completed in the preceding 12 months, including--

(i) foreclosure proceedings initiated in such 12-month period; and

(ii) the date of the foreclosure completion; and

(H) include any other information that the Secretary determines is necessary to carry out this section.

(3) COMPLIANCE PLAN AND REPORT- The Secretary, in consultation with the heads of appropriate agencies, shall--

(A) develop a plan to monitor the compliance with the requirements established in this subsection by mortgagees and servicers; and

(B) submit to Congress a report on such plan.

(e) Consolidated Database- The Federal Financial Institutions Examination Council shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this subsection.

(f) Authorization of Appropriations- There are authorized to be appropriated to carry out this section--

(1) $5,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for each of fiscal years 2011 through 2013.

SEC. 6. HOUSING TRUST FUND.

From funds received by the Secretary of the Treasury from the sale of warrants under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.), the Secretary of the Treasury shall transfer and credit $1,000,000,000 to the Housing Trust Fund established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4568) for use in accordance with such section.

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MASSACHUSETTS

(PENDING)

HOUSE DOCKET, NO. 4057 FILED ON: 2/12/2009

HOUSE . . . . . No. 4003

The Commonwealth of Massachusetts

PRESENTED BY:

Vincent A. Pedone

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to a foreclosure mediation program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Vincent A. Pedone	15th Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO A FORECLOSURE MEDIATION PROGRAM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (a) of section 35A of chapter 244 of the General Laws is hereby amended by striking out the second sentence.

SECTION 2. Subsection (c) of said section 35A of chapter 244 of the General Laws is hereby amended by adding the following clause:-

(7) the mortgagor shall be offered the opportunity to participate in a court-supervised foreclosure mediation program. In that program the mortgagor will have the opportunity to negotiate an agreement with the mortgagee. The mortgagor is encouraged to meet with a housing counselor or attorney prior to mediation.

SECTION 3. Section 35A of chapter 244 of the General Laws is hereby amended by adding the following subsection:-

(g) The commissioner of the division of banks shall make available to the chief justice for administration and management a copy of the notice required by this section.

SECTION 4. Chapter 244 of the Massachusetts General Laws is hereby amended by inserting after section 35A the following section:-

Section 35B.(a) A mortgagee shall not initiate a foreclosure of a residential real property consisting of a dwelling house with accommodations for 4 or less separate households and occupied in whole or in part by the mortgagor unless it has made a good faith review of the borrower's financial situation and offered, whenever feasible, a loan modification, or other option to assist the borrower in bringing the arrears current. A good faith review of the borrower's financial situation includes, but is not limited to, an evaluation of the mortgagor's eligibility for all loan modification programs established by the federal government or the mortgage industry, and if the mortgagor's elects, participation in the foreclosure mediation program established in this section. Failure to comply with this section constitutes a defense to the foreclosure.

(b) Not later than June 30, 2009 the chief justice for administration and management shall establish in each judicial district a foreclosure mediation program in actions to foreclose mortgages on residential real property consisting of a dwelling house with accommodations for 4 or less separate

households and occupied in whole or in part by the mortgagor.

(c) The foreclosure mediation program shall: (i) address all the issues related to the foreclosure, including, but not limited to, reinstatement of the mortgage, and the restructuring of the mortgage debt; and (ii) be conducted by mediators who are employed by the court, trained in mediation and all relevant aspects of the law, as determined by the chief justice for administration and management, have knowledge of the community-based resources that are available in the commonwealth, and have knowledge of any assistance programs established by the commonwealth or other sources. Such mediators may refer mortgagors who participate in the foreclosure mediation program to community-based resources when appropriate and to assistance programs.

(d) Upon receiving notice from the commissioner of the division of banks of a filing pursuant to subsection (f) of section 35A, the court shall send a notice of the availability of the mediation program to the mortgagor. The notice shall inform mortgagors of the program and encourage mortgagors to meet with a housing counselor or attorney prior to mediation. The mortgagor has 15 business days to return a foreclosure mediation request form to the court.

(e) The mediation period under the foreclosure mediation program established in this section shall commence when the court sends notice to each party that a foreclosure mediation request form has been submitted by a mortgagor to the court, which notice shall be sent not later than three business days after the court receives a completed foreclosure mediation request form. Except as outlined in subsection (g), the mediation period shall conclude not more than 60 days after the return day for the foreclosure action.

(f) The first mediation session shall be held not later than 10 business days after the court sends notice to all parties that a foreclosure mediation request form has been submitted to the court. The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available during the mediation session by telephone or electronic means.

(g) Not later than 5 business days after the conclusion of the first mediation session, the mediator shall determine whether the parties will benefit from further mediation. The mediator shall file with the court a report setting forth such determination and mail a copy of such report to each appearing party. If the mediator reports to the court that the parties will not benefit from further mediation, the mediation period shall terminate automatically. If the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period shall continue for an additional 30 days.

(h) The chief justice for administration and management shall establish policies and procedures to implement this section. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by this section that: (i) during the mediation period, the foreclosure process is suspended; (ii) if the parties are unable to come to an agreement and the foreclosure process resumes, such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with applicable law; and (iii) a foreclosure sale may cause the mortgagor to lose the residential real property.

(i) If no agreement is reached during the mediation, the mortgagor shall receive written notice as to when the foreclosure proceeding will resume and a description of the ensuing procedure.

(j) An affidavit demonstrating compliance with subsection (a) shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(k) The money necessary to establish and operate the foreclosure mediation program shall be appropriated to the judicial department.

NEW YORK (PENDING)

S T A T E O F N E W Y O R K

8236

2009-2010 Regular Sessions

I N A S S E M B L Y

May 11, 2009

Introduced by M. of A. JEFFRIES, JAFFEE, COLTON, CAMARA, ESPAILLAT, ROSENTHAL, WALKER, REILLY, O'DONNELL, BENJAMIN, COOK, LANCMAN, BARRON, PERRY, CASTRO -- Multi-Sponsored by -- M. of A. FIELDS, GLICK, HEASTIE, MENG, PEOPLES, PHEFFER, THIELE, WEISENBERG -- read once and referred to the Committee on Banks

AN ACT enacting the "foreclosure diversion act of 2009"; to amend the real property actions and proceedings law, in relation to giving notice to mortgagors of the availability of foreclosure prevention counseling; to amend the banking law and the civil practice law and rules, in relation to settlement conferences; to amend the real property actions and proceedings law, in relation to availability of a settlement conference in pending foreclosure actions; to amend the real property actions and proceedings law, in relation to providing a one-year postponement on foreclosures; to amend the judiciary law, in relation to the assignment of foreclosure actions; and to repeal certain provisions of the civil practice law and rules relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "foreclosure diversion act of 2009".

S 2. Statement of legislative purpose and findings. The legislature finds and declares that there is a public emergency; that the extension of unaffordable mortgage loans, unaffordable second mortgages and unaffordable home equity loans have resulted in thousands of homeowners losing their homes. The problems associated with these loans adversely affect the availability of capital, the demand for housing, the value of real estate, and more importantly, the ability of homeowners to keep their homes and communities viable. The pending reset of interest rates in many home mortgages, second mortgages and home equity loans will only exacerbate this situation for many homeowners. The expectation that many

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD08584-10-9

such variable rate mortgages will fall into foreclosure upon the reset of the interest rate compels the state to take action. State assistance to homeowners through a counseling program is necessary in order to stem this crisis.

S 3. Definitions. As used in this act, the following words and phrases

shall have the following meanings:

1. "Commissioner" shall mean the commissioner of the state division of housing and community renewal.

2. "Department" shall mean the banking department.

3. "Division" shall mean the state division of housing and community renewal.

4. "Eligible homeowners" shall mean any resident of this state currently residing in a home located in this state subject to a home loan who the commissioner determines, pursuant to the eligibility restrictions set forth in this act, is in need of foreclosure diversion assistance.

5. "Home loan" shall mean a residential home mortgage loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(a) the borrower is a natural person;

(b) the debt is incurred by the borrower primarily for personal, family or household purposes;

(c) the loan is secured by a mortgage or deed of trust on real estate upon which there is located a structure or structures intended principally for occupancy of 1 to 4 families which is occupied by the borrower as the borrower's principal dwelling; and

(d) the property is located in this state.

6. "Lender" shall mean (a) a mortgage banker as defined in paragraph (f) of subdivision 1 of section 590 of the banking law, or (b) an exempt organization as defined in paragraph (e) of subdivision 1 of section 590 of the banking law, or (c) a mortgage loan servicer as defined in paragraph (h) of subdivision 1 of section 590 of the banking law.

7. "Non-profit assistance provider" shall mean a corporation or group of corporations organized under the provisions of the not-for-profit corporation law, including but not limited to neighborhood preservation companies as defined in section 902 of the private housing finance law, entities that perform housing preservation and community renewal activities pursuant to article 17 of the private housing finance law, commonly referred to as rural preservation companies, and legal service providers, and municipalities.

8. "Service area" shall mean the established or stated boundaries of a non-profit assistance provider or, if an assistance provider does not have established boundaries for the geographic area in which it provides services, the geographic area defined in its proposal to the division to be a service provider.

9. "Superintendent" shall mean the superintendent of banks.

S 4. Education and outreach to homeowners. In coordination with the division and the consumer protection board, the department shall undertake outreach activities directed at any homeowners whose homes are subject to foreclosure. Such outreach activities shall include, but not be limited to:

1. the production and broadcast of public service announcements using electronic media to inform the general public of the availability of counseling through the New York state foreclosure diversion program established by this act. Such public service announcements shall inform

the homeowner of the nature and purpose of the counseling and provide a website and phone number for the homeowner to utilize; and

2. the inclusion of a description on the internet websites maintained by the division, the banking department and the consumer protection board of the New York state foreclosure diversion program and a listing

of those entities that provide counseling with respect to the program. Such listing shall include the address and phone number of each entity.

S 5. Subdivisions 1 and 3 of section 1303 of the real property actions and proceedings law, as amended by chapter 472 of the laws of 2008, are amended to read as follows:

1. The foreclosing party in a mortgage foreclosure action, which involves residential real property consisting of owner-occupied one-to-four-family dwellings shall provide notice to the mortgagor in accordance with the provisions of this section with regard to information and assistance about the foreclosure process. SUCH NOTICE SHALL INCLUDE INFORMATION ABOUT THE AVAILABILITY OF THE FORECLOSURE DIVERSION PROGRAM AND ITS ABILITY TO ASSIST HOMEOWNERS IN AVOIDING FORECLOSURE AND THE MANDATORY COUNSELING REQUIRED FOR PARTICIPATION IN THE FORECLOSURE DIVERSION PROGRAM. SUCH NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT AND PROVIDED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL PURSUANT TO SECTION FOUR OF THE FORECLOSURE DIVERSION ACT OF 2009 AND THE NAMES AND CONTACT INFORMATION FOR ALL NOT-FOR-PROFIT ASSISTANCE PROVIDERS AUTHORIZED BY THE DEPARTMENT TO PROVIDE HOUSING COUNSELING SERVICES TO HOMEOWNERS.

3. The notice required by this section shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

BEFORE YOU ATTEND A SETTLEMENT CONFERENCE, YOU ARE STRONGLY URGED TO SCHEDULE AND ATTEND A COUNSELING SESSION BY CALLING THE BANKING DEPARTMENT AT THE FOLLOWING HOTLINE NUMBER: _____

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. YOU SHOULD IMMEDIATELY SEEK OUT AN APPROVED LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS CAN BE OBTAINED BY CALLING THE HOTLINE. IF YOU DO NOT ATTEND A COUNSELING SESSION, YOU WILL NOT BE ELIGIBLE TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM. THIS WILL NOT AFFECT YOUR RIGHT TO A SETTLEMENT CONFERENCE, BUT WILL AFFECT YOUR ELIGIBILITY FOR A POSTPONEMENT OF FORECLOSURE UNDER THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at _____ (enter number) or visit the Department's website at _____ (enter web address).

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in

order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully

describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

S 6. The banking law is amended by adding a new section 6-n to read as follows:

S 6-N. COUNSELING OF MORTGAGEES. 1. THE DEPARTMENT SHALL ESTABLISH A PROCEDURE TO COUNSEL HOMEOWNERS WHOSE PROPERTY IS SUBJECT TO OR ABOUT TO BECOME SUBJECT TO FORECLOSURE.

2. A COUNSELOR FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DEPARTMENT SHALL MEET WITH ALL HOMEOWNERS PRIOR TO THEIR SCHEDULED SETTLEMENT CONFERENCE. THE COUNSELOR SHALL ALSO CONSULT WITH THE FORECLOSING PARTY OR SUCH PARTY'S REPRESENTATIVE AND ATTEMPT TO FORMULATE A REPAYMENT SCHEDULE THAT IS ACCEPTABLE TO BOTH THE HOMEOWNER AND THE FORECLOSING PARTY. IF THE PARTIES AGREE, THEY SHALL FILE A CERTIFICATE OF RESOLUTION WITH THE COURT OF JURISDICTION.

3. IF THE COUNSELOR IS UNABLE TO NEGOTIATE AN ACCEPTABLE RESOLUTION, THE PARTIES SHALL FILE A CERTIFICATE OF PARTICIPATION WITH THE COURT OF JURISDICTION AND THE SCHEDULED SETTLEMENT CONFERENCE SHALL PROCEED.

S 7. Rule 3408 of the civil practice law and rules is REPEALED and a new rule 3408 is added to read as follows:

RULE 3408. MANDATORY SETTLEMENT CONFERENCE IN RESIDENTIAL FORECLOSURE ACTIONS. 1. IN ANY RESIDENTIAL FORECLOSURE ACTION IN WHICH THE DEFENDANT IS A RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COURT SHALL HOLD A MANDATORY CONFERENCE WITHIN NINETY DAYS AFTER THE DATE WHEN PROOF OF SERVICE IS FILED WITH THE COUNTY CLERK, OR ON SUCH ADJOURNED DATE AS HAS BEEN AGREED TO BY THE PARTIES, FOR THE PURPOSE OF HOLDING SETTLEMENT DISCUSSIONS PERTAINING TO THE RELATIVE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THE MORTGAGE LOAN DOCUMENTS, INCLUDING, BUT NOT LIMITED TO DETERMINING WHETHER THE PARTIES CAN REACH A MUTUALLY AGREEABLE RESOLUTION TO HELP THE DEFENDANT AVOID LOSING HIS OR HER HOME, AND EVALUATING THE POTENTIAL FOR A RESOLUTION IN WHICH PAYMENT SCHEDULES OR AMOUNTS MAY BE MODIFIED OR OTHER WORKOUT OPTIONS MAY BE AGREED TO, AND FOR WHATEVER OTHER PURPOSES THE COURT DEEMS APPROPRIATE.

2. THE COURT SHALL CAUSE A NOTICE TO BE SENT TO THE PARTIES BY CERTIFIED MAIL INFORMING THEM OF THE DATE, TIME, AND LOCATION OF THE CONFERENCE, AND INFORMING THE HOMEOWNER OF HIS OR HER OPTION OF PARTICIPATION IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM ESTABLISHED PURSUANT TO THE FORECLOSURE DIVERSION ACT OF 2009. THE NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT PURSUANT TO THE FORECLOSURE DIVERSION ACT OF 2009 AND A STATEMENT THAT THE HOMEOWNER MUST COMPLETE A COUNSELING SESSION PRIOR TO HIS OR HER SCHEDULED SETTLEMENT CONFERENCE IN ORDER TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

3. IF THE HOMEOWNER COMPLETES A COUNSELING SESSION WITH A COUNSELOR FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DEPARTMENT, SUCH COUNSELOR SHALL SEND A LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE. THE FORECLOSING PARTY SHALL, PRIOR TO THE SETTLEMENT CONFERENCE, REVIEW THE MODIFICATION PROPOSAL AND MAKE A GOOD FAITH EFFORT TO REACH A RESOLUTION WITH THE HOMEOWNER.

4. AT THE INITIAL CONFERENCE HELD PURSUANT TO THIS SECTION, ANY DEFENDANT CURRENTLY APPEARING PRO SE, SHALL BE DEEMED TO HAVE MADE A

MOTION TO PROCEED AS A POOR PERSON UNDER SECTION ELEVEN HUNDRED ONE OF THE CIVIL PRACTICE LAW AND RULES. THE COURT SHALL DETERMINE WHETHER SUCH PERMISSION SHALL BE GRANTED PURSUANT TO STANDARDS SET FORTH IN SECTION

ELEVEN HUNDRED ONE OF THIS CHAPTER. IF THE COURT APPOINTS DEFENDANT COUNSEL PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TWO OF THIS CHAPTER, IT SHALL ADJOURN THE CONFERENCE TO A DATE CERTAIN FOR APPEARANCE OF COUNSEL AND SETTLEMENT DISCUSSIONS PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND OTHERWISE SHALL PROCEED WITH THE CONFERENCE.

5. AT ANY CONFERENCE HELD PURSUANT TO THIS SECTION, THE PLAINTIFF SHALL APPEAR IN PERSON OR BY COUNSEL, AND IF APPEARING BY COUNSEL, SUCH COUNSEL SHALL BE FULLY AUTHORIZED TO DISPOSE OF THE CASE. THE DEFENDANT SHALL APPEAR IN PERSON OR BY COUNSEL. IF THE DEFENDANT IS APPEARING PRO SE, THE COURT SHALL ADVISE THE DEFENDANT OF THE NATURE OF THE ACTION AND HIS OR HER RIGHTS AND RESPONSIBILITIES AS A DEFENDANT. WHERE APPROPRIATE, THE COURT MAY PERMIT A REPRESENTATIVE OF THE PLAINTIFF TO ATTEND THE SETTLEMENT CONFERENCE TELEPHONICALLY OR BY VIDEO-CONFERENCE.

6. BOTH PARTIES MUST HAVE ANY SUPPORTING DOCUMENTATION WITH THEM AT THE TIME OF THE CONFERENCE. IF THE HOMEOWNER ATTENDED A COUNSELING SESSION WITH AN APPROVED COUNSELOR, SUCH COUNSELOR MUST HAVE GIVEN A LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE.

7. THE COURT SHALL PRESIDE OVER THE CONFERENCE IN AN EFFORT TO ESTABLISH A REPAYMENT PLAN THAT IS ACCEPTABLE TO THE LENDER THAT ALLOWS THE HOMEOWNER TO REMAIN IN THE HOME.

8. AFTER THE SETTLEMENT CONFERENCE, THE COURT SHALL PRODUCE A REPORT FINALIZING AND DETAILING ANY TERMS AND CONDITIONS THAT HAVE BEEN AGREED UPON BY THE PARTIES. SUCH REPORT SHALL BE MADE PART OF THE RECORD FOR THE ACTION.

S 8. The real property actions and proceedings law is amended by adding a new section 1316 to read as follows:

S 1316. THE COURT SHALL NOTIFY THE DEFENDANT OF ANY FORECLOSURE ACTION ON A RESIDENTIAL MORTGAGE LOAN, IN WHICH THE ACTION WAS INITIATED BUT WHERE THE FINAL ORDER OF JUDGMENT WAS NOT ISSUED PRIOR TO THE EFFECTIVE DATE OF THE FORECLOSURE DIVERSION ACT OF 2009, THAT SUCH DEFENDANT MAY REQUEST A SETTLEMENT CONFERENCE IN ACCORDANCE WITH RULE THIRTY-FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 9. The real property actions and proceedings law is amended by adding a new section 1305 to read as follows:

S 1305. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS SECTION.

2. TIMING OF POSTPONEMENT. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING FOR A PERIOD OF NINETY DAYS. IF THE MORTGAGOR RECEIVES COUNSELING FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DIVISION AND SUBSEQUENTLY PARTICIPATES IN A SETTLEMENT CONFERENCE, THEN THE COURT BEFORE WHICH SUCH ACTION IS PENDING SHALL HOLD SUCH ACTION IN ABEYANCE FOR AN ADDITIONAL NINE MONTHS. SUCH ADDITIONAL PERIOD OF TIME IS INTENDED TO PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORESTALL FORECLOSURE WHEREVER POSSIBLE.

3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD

SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION. MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES

MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.

4. PRIMA FACIE CASE. A MORTGAGOR MUST ESTABLISH A PRIMA FACIE CASE IN THE MOTION OR PLEADING. AMENDMENTS TO SUCH MOTION OR PLEADING SHALL BE LIBERALLY GRANTED. SUCH PLEADING MUST ESTABLISH THAT:

A. THE MORTGAGOR IS A NATURAL PERSON; AND

B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; AND

C. THE LOAN IS SECURED BY A MORTGAGE, SECOND MORTGAGE OR HOME EQUITY LOAN ON REAL PROPERTY WHICH IS IMPROVED WITH A RESIDENTIAL BUILDING CONTAINING ONE TO FOUR DWELLING UNITS; AND

D. THE REAL PROPERTY SUBJECT TO FORECLOSURE IS THE PRINCIPAL RESIDENCE OF THE MORTGAGOR; AND

E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND

F. THE REAL PROPERTY IS LOCATED IN THIS STATE.

5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTABLISHED, THE COURT OFFICER OR MEDIATOR PRESIDING OVER THE SETTLEMENT CONFERENCE SET FORTH IN RULE 3408 OF THE CIVIL PRACTICE LAW AND RULES SHALL WORK WITH THE PARTIES TO ESTABLISH THE TERMS OF A MONTHLY PAYMENT SCHEDULE WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END, THE COURT OFFICER OR MEDIATOR SHALL INQUIRE INTO THE FINANCES OF BOTH THE MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF SUCH INQUIRY SHALL BE TO DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE MORTGAGEE'S FINANCIAL POSITION AND TO DETERMINE THE AMOUNT WHICH THE MORTGAGOR WILL BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL BE APPLIED TO THE PRINCIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE FINANCIAL CONDITION OF THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY AMOUNT MAY BE INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN THE DISCRETION OF THE COURT OFFICER OR MEDIATOR. IT IS WITHIN THE COURT OFFICER'S OR MEDIATOR'S DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST. THE PURPOSE OF SUCH MONTHLY PAYMENTS IS TO PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR. FAILURE TO ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR LIFTING OF THE ABEYANCE.

6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN ORDER WHICH SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT UPON ALL PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN DATE FOR THE RE-EXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE POSTPONEMENT TIME PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE COURT MAY

TAILOR RELIEF AS REQUIRED BY THE FACTS OF EACH CASE THAT FALLS WITHIN

THE PURVIEW OF THIS SECTION. HOWEVER, IN NO EVENT SHALL SUCH ORDER POSTPONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-EXAMINATION OF THE PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE TO THE PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE DATE OF THE ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE FORECLOSURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION IS POSSIBLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS ELAPSED. ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME REGARDLESS OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE. MULTIPLE POSTPONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF WARRANTED BY THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE STATE.

7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURISDICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLICATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY REQUIRE.

S 10. The judiciary law is amended by adding a new section 2-c to read as follows:

S 2-C. INDIVIDUAL ASSIGNMENTS. THE UNIFIED COURT SYSTEM, IN ACCORDANCE WITH THEIR INDIVIDUAL ASSIGNMENT SYSTEM, SHALL ENSURE THAT ALL CAUSES OF ACTION TO FORECLOSE ON REAL PROPERTY SHALL BE ASSIGNED TO THE SAME JUDGE OR JUDGES, TO THE EXTENT PRACTICABLE.

S 11. Notwithstanding the ninety day provision in subdivision 1 of rule 3408 of the civil practice law and rules, a judge shall schedule settlement conferences pursuant to such section for any foreclosure proceeding currently on their calendar.

S 12. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the superintendent of banks may promulgate any rule or regulation necessary for the timely implementation of this act on its effective date.

WISCONSIN (PENDING)

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB-0962/1
RPN:wlj:md

2009 SENATE BILL 255

August 11, 2009 – Introduced by Senators TAYLOR, LASSA, WIRCH, LEHMAN and HOLPERIN, cosponsored by Representatives YOUNG, GRIGSBY, BERCEAU, ROYS, CLARK, TURNER, A. WILLIAMS, ZEPNICK, RICHARDS and KESSLER. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

AN ACT ***to amend*** 904.085 (2) (a); and ***to create*** 846.03 of the statutes; **relating to:** notification of default and mediation regarding residential real property subject to foreclosure and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, if a mortgagee brings an action for foreclosure of a mortgage on a residential property, the homeowner (mortgagor or borrower) is served with a summons and complaint and the normal civil procedural rules of pleadings, discovery of evidence, pretrial, and trial apply. If the court finds that the mortgagee has the right to the foreclosure, the court issues a judgment for foreclosure of the mortgage, which entitles the mortgagee to force a sale of the property after a redemption period has ended.

This bill creates a process to allow a borrower who owes a first or second mortgage loan on a residential property to seek mediation when the borrower is in default on the loan and the mortgagee is beginning a mortgage foreclosure action. Under the bill, if the borrower has failed to make two consecutive mortgage loan payments, the mortgagee must send the borrower a notice when commencing a foreclosure action. The notice must inform the borrower of the default and what must be done to cure the default, state that the mortgagee intends to start a foreclosure action, and provide the names and addresses of credit counseling services available to homeowners.

Under the bill, when a mortgagee starts a foreclosure action, the mortgagee must inform the borrower of the right to request mediation by submitting a request

to the director of state courts (director). If mediation is requested, the foreclosure action is stayed until mediation is completed. When the borrower requests mediation, the bill requires the director to refer the borrower to a financial analyst for advice regarding the mortgage foreclosure and to provide the mortgagee and borrower with names of persons who are available to provide mediation services. The bill requires the director to create a list of persons who have knowledge of financial matters to serve as mediators, create a separate list of persons to serve as financial analysts, and provide those persons with training related to their duties under the bill.

The bill requires the director to notify the parties of the time and place of the mediation session. The mediator may not compel a settlement between the parties, but must attempt to achieve a resolution of the issues involved in the mediation. The bill requires the parties to engage in the mediation in good faith, which includes attending the mediation sessions, providing full information to the mediator and other party, and considering debt restructuring alternatives as a method of resolving the default. The cost of the mediator may be added to the mortgage loan payments required by the borrower.

Under the bill, if the mediator determines that the borrower or mortgagee has not mediated in good faith, the mediator provides that information to the court. If the mortgagee has not mediated in good faith, the court may supervise the mediation directly, prohibit the mortgagee from continuing an action to foreclose on the residential property for 180 days, or order the mortgagee to pay the borrower's court costs, including attorney fees. If the borrower has not mediated in good faith, the mortgagee may proceed immediately to foreclose on the residential property.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 846.03 of the statutes is created to read:

846.03 Notification and mediation before foreclosure of residential real property. (1) In this section:

(a) "Borrower" means the person who gives to the mortgagee a first or 2nd mortgage on the residential real property owned by the person, to provide security for repayment of the first or 2nd mortgage loan provided to the borrower.

(b) "Director" means the director of state courts.

(c) "First mortgage loan" means a loan on residential real property that is secured by a first lien real estate mortgage.

(d) "Mortgagee" means a person who receives a first or 2nd mortgage on residential real property to secure payment of a first or 2nd mortgage loan made to the owner of the residential real property.

(e) "Residential real property" means real property on which a one–family to 4–family dwelling is constructed or intended to be constructed in this state and that the owner of the real property uses, or intends to use, as his or her principal place of residence.

(f) "Second mortgage loan" means a loan on residential real property, including the renewal or refinancing of an existing 2nd mortgage loan, that is secured by a real estate mortgage, is subordinate to a first mortgage loan, includes a penalty for prepayment of the loan, and has a payment schedule that causes the principal balance to not decrease or to increase.

(2) NOTICE OF DEFAULT REQUIRED. (a) If a borrower has failed to make full scheduled payments on a first or 2nd mortgage loan for 2 consecutive payment periods and the failure to make these payments renders the borrower in default under the terms of the first or 2nd mortgage loan, a mortgagee holding or servicing the first or 2nd mortgage loan shall, before commencing an action to foreclose on the first or 2nd mortgage loan, provide the borrower with a notice no later than 45 days after the due date for the 2nd payment period and shall make a good faith effort to speak to the borrower and inform him or her of the contents of the notice.

(b) The notice required under par. (a) shall inform the borrower of all of the following:

1. Any action or procedure required of the borrower to cure the default on the first or 2nd mortgage loan, including any amount that must be paid to cure the default and to bring the borrower current on the first or 2nd mortgage loan, and any date by which the action or procedure must be taken.

2. The names and addresses of adjustment service companies licensed under s. 218.02 that offer credit counseling services to homeowners.

3. The legal description and the postal address of the residential real property that is the subject of the first or 2nd mortgage loan.

4. That the mortgagee intends to bring an action to obtain a court judgment of foreclosure on the first or 2nd mortgage loan.

(c) If a mortgagee commences an action to foreclose on the first or 2nd mortgage loan without meeting the requirements under this subsection, the court in which the action is commenced shall, on its own motion or on the motion of a party, dismiss the action and may charge the mortgagee with costs, including the borrower's attorney fees.

(3) COMMENCEMENT OF MORTGAGE FORECLOSURE AND MEDIATION NOTICE. (a) When the mortgagee commences an action to foreclose on a first or 2nd mortgage loan, the mortgagee shall provide the borrower with a notice regarding the right to mediation and a mediation request form. The mediation request form shall include spaces to fill in the information necessary to identify the mortgagee, borrower, and residential real property involved and the date the form was received from the mortgagee and shall include the location where the form should be sent. The notice shall inform the borrower of all of the following:

1. That the borrower has the right to request mediation regarding the first or 2nd mortgage loan, provided that the borrower has not participated in mediation

within the past 2 years, or agreed to certain loan modifications with the same mortgagee on the same residential real property within the past 3 years. The notice shall include an explanation of when the limit on mediation as the result of a loan modification applies.

2. That the right to mediation under this section regarding a first or 2nd mortgage loan applies only once.

3. That to request mediation, the borrower must submit a request for mediation to the director within 14 working days after receipt of the notice of the right to mediation.

4. That the action to foreclose the residential real property will be stayed until the mediation ends if mediation is requested within 10 days after receipt of the notice.

5. That if mediation is not requested within 10 working days, the mortgagee may immediately continue the action to foreclose on the first or 2nd mortgage loan.

6. That if mediation is requested, the director will provide financial analysis assistance to the borrower to prepare for the mediation.

7. The name, telephone number, and address of the mortgagee.

8. The address where the request for mediation must be sent.

(b) To request mediation, the borrower shall submit a completed mediation request form, or a substantially similar form, to the director within 10 working days after receipt of the right to mediation from the mortgagee.

(4) REQUEST FOR MEDIATION. (a) Within 10 working days after receipt of a notice of the right to mediation under sub. (3), the borrower may submit a request to the director for mediation. If the director receives a request for mediation, the director shall notify the parties of the request as provided in sub. (6). Within 5 working days

after notifying the parties, the mortgagee may submit information to the director asserting that the borrower is not eligible for mediation under pars. (b) or (c). If the mortgagee submits the information, the director shall immediately provide the borrower with the information and allow the borrower 5 working days to submit information to the director in response to the mortgagee's assertion. The director shall determine if the borrower has the right to mediation and notify both parties of that decision within 15 working days of receipt of the mortgagee's submitted information. The director's determination is appealable to the circuit court.

(b) If the borrower has participated in mediation with the same mortgagee on the same residential real property within the past 2 years, the borrower is not eligible for mediation under this section.

(c) If the borrower has agreed to a loan modification with the same mortgagee on the same residential real property within the past 3 years, the borrower is not eligible for mediation under this section. This paragraph does not apply if the loan modification did not meet the debt–to–income guidelines established by a federal agency that insures or guarantees loans. This paragraph does not apply if the loan modification did not take into account the borrower's ratio of current assets to current liabilities at the time the loan modification was completed.

(d) If a borrower has requested mediation under this subsection and has not been found ineligible for mediation under par. (a), (b), or (c), the director shall notify the court that the borrower has requested mediation and is eligible for mediation under this section. Upon receipt of the notification, the court shall stay the foreclosure action until the mediation is completed.

(5) MEDIATORS AND FINANCIAL ANALYSIS. (a) The director shall create a list of persons who have the character and ability to serve as mediators, and who have

knowledge of financial or residential housing matters and of mediation processes, to act as mediators under this section. The director shall create a list of persons who have the character and ability to serve as financial analysts, and who have knowledge of financial and residential housing matters, to act as financial analysts under this section. The director shall provide each mediator with sufficient training to develop or maintain the skills necessary to perform his or her duties under this section.

(b) The mortgagee shall compensate mediators and financial analysts for travel and other necessary expenses in amounts the director approves. A mortgagee may recover the costs of compensating any mediator and financial analyst used in the mediation by adding that cost to the periodic payments made by the borrower on the first or 2nd mortgage loan. A mortgagee may not recover the costs of compensating mediators and financial analysts under this paragraph if the mortgagee does not mediate in good faith. If a mortgagee mediates in good faith but the borrower does not mediate in good faith, the borrower shall compensate any mediator and financial analyst used in the mediation.

(c) Mediators and financial analysts are immune from civil liability for any act or omission within the scope of their performance of their duties under this section.

(d) All mediators and financial analysts shall keep confidential all information and records obtained in performing their duties under this section. The director shall keep confidential all information and records that may serve to identify any party to mediation under this section. Any information required to be kept confidential under this paragraph may be disclosed if the director and the parties agree to disclosure.

(6) MEDIATION PROCESS. (a) Within 3 working days after receipt of a request for mediation, the director shall notify the borrower and mortgagee of receipt of the request and provide the mortgagor with the name, telephone number, and address of a financial analyst who can without charge provide the borrower with advice and written materials to help him or her prepare for the mediation. The financial analyst may meet with the borrower to prepare for the mediation.

(b) If the residential real property is located in whole or part in a county having a population of 500,000 or more, the borrower shall meet with a counselor certified by the federal department of housing and urban development before mediation as a condition of having the right to mediation under this subsection.

(c) Within 10 working days after determining under sub. (4) that mediation may occur, the director shall provide the borrower and mortgagee with the names, telephone numbers, and addresses of not fewer than 2 mediators in the geographical area in which the residential real property is located. Within 5 working days after the director submits to the parties the names of the mediators, each party shall select a mediator and notify the director of the party's selection. If the parties agree on a mediator, the director shall notify them of the agreed upon mediator within 5 working days after receipt of their selection. If the parties do not agree on a mediator, if one party does not notify the director of a selection in a timely manner, or if both parties so request, the director shall, within 15 days after the director submitted the names of the mediators to the parties, select a mediator and notify the parties of the selection.

(d) Within 10 working days after the parties are notified of the selection of a mediator, the director shall notify the parties and the mediator of the place and time

of the first mediation session. The first mediation session shall take place not later than 20 working days after the parties are notified of the selection of a mediator.

(e) The mediator shall encourage a voluntary settlement between the parties. The mediator may not compel a settlement. The mediator shall advise the parties of assistance programs that are available and attempt to arrive at a fair agreement to adjust, refinance, or pay the first or 2nd mortgage loan. The mediator shall schedule meetings of the parties, direct the parties to prepare for the meetings, attempt to achieve a resolution to the issues between the parties and, if the parties request, assist the parties in preparing a written agreement. All mediation meetings shall be held in this state and be conducted under the laws of this state and may be held using telecommunications.

(f) Mediation may continue during a period not to exceed 60 days after the first mediation session. After the expiration of the 60 days, the parties may no longer participate in the mediation process regarding the same first or 2nd mortgage loan unless the parties and the mediator agree to continue the mediation.

(g) The parties have full responsibility for reaching and enforcing any mediated agreement. The mediation agreement may be enforced by the circuit court for the county in which the residential real property is located.

(h) The parties shall engage in mediation in good faith. Failure to mediate in good faith includes any of the following:

1. Failing on a regular basis to attend and participate in mediation sessions without good cause.

2. Failing to provide full information regarding the party's financial obligations.

3. Failure of a party to designate a representative with adequate authority to fully settle, compromise, or otherwise mediate the matter.

4. Failure of a party to consider debt restructuring alternatives and to provide a written statement as to why debt restructuring alternatives are unacceptable.

5. Other similar behavior that indicates the lack of good faith of a party to engage in mediation.

(i) If the mediator determines that a party is not engaged in the mediation in good faith or that the borrower has withdrawn from the mediation, the mediator shall provide to both of the parties and to the director an affidavit indicating the reasons for the determination. If a party disagrees with the mediator's affidavit that he or she is not acting in good faith, the party may request by motion that the circuit court review the mediator's determination. If the court finds that the mediator's determination was in error, the court shall order the mediator to continue the mediation.

(j) If the mediator provides an affidavit indicating that the borrower is not acting in good faith or has withdrawn from the mediation, and the borrower has not requested a review of the mediator's determination under par. (i) or the court has found that the mediator's determination was correct, the mortgagee may immediately proceed with any legal remedies to foreclose on the first or 2nd mortgage loan.

(k) If the mediator provides an affidavit indicating that the mortgagee is not acting in good faith, and the mortgagee has not requested a review of the mediator's determination under par. (i) or the court has found that the mediator's determination was correct, the borrower may seek an order by motion in the circuit court to have the court supervise mediation between the parties. The borrower shall include a copy

of the mediator's affidavit with the motion filed with the court. Upon receipt of the motion and affidavit, the court shall hold a hearing to determine if the parties should be subject to mediation supervised by the court. The court may require the parties to mediate in good faith under the court's supervision for up to 60 working days and may issue any orders necessary to enforce the requirement. If the court finds that the mortgagee has not participated in the court–ordered mediation in good faith, the court shall prohibit the mortgagee from continuing any action to foreclose on the first or 2nd mortgage loan for 180 days. In addition, the court shall order the mortgagee to pay costs and attorney fees incurred by the mortgagee related to the court action under this subsection.

(7) REDEMPTION PERIOD REDUCED. If the parties have completed the mediation process under sub. (6) and agree that the foreclosure action should continue, the redemption period shall be reduced to 6 months after the judgment for foreclosure is entered.

(8) OTHER CREDITORS; NO DELAY. With respect to mediation between parties before an action to which they are parties has been initiated, no agreement to mediate, or the fact that mediation is currently occurring, may have the effect of delaying, postponing, or extending any time limits in any legal proceeding commenced to enforce a mortgage, land contract, lien, security interest, or judgment commenced by a creditor other than the mortgagee participating in the mediation.

(9) FORMS, RULE MAKING, AND PUBLICITY. (a) The director shall prepare all forms necessary for the administration of this section and shall ensure that the forms are disseminated to the clerks of circuit court for distribution to the public without charge.

(b) The director shall publicize the availability of mediation under this section and the procedures necessary to obtain mediation.

(c) The director, in consultation with the University of Wisconsin–Extension, shall promulgate rules necessary to implement this section.

(10) SUNSET. This section does not apply to actions to foreclose on a first or 2nd mortgage loan that are commenced after December 31, 2011.

SECTION 2. 904.085 (2) (a) of the statutes is amended to read:

904.085 **(2)** (a) "Mediation" means mediation under s. 93.50 (3), conciliation under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation under s. 115.797, negotiation under s. 289.33 (9), mediation under ch. 655 or s. 767.405 or 846.03, or any similar statutory, contractual, or court–referred process facilitating the voluntary resolution of disputes. "Mediation" does not include binding arbitration or appraisal.

(END)

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