

PENNSYLVANIA LEGAL AID NETWORK

Presents an Update on Avoiding Mortgage Foreclosure

*A training session for housing counselors
legal aid attorneys & pro bono attorneys*



**Harrisburg Hilton Hotel
1 North Second Street
Harrisburg, PA**

**June 12, 2012
9:00 AM to 4:00 PM**

*(5 CLE credits for attorneys
5 hours of continuing education for housing counselors)*

Avoiding Foreclosure Update 2012
Pennsylvania Legal Aid Network
June 12, 2012
Harrisburg Hilton
1 North Second Street, Harrisburg, PA

- 8:15 a.m. Registration & Continental Breakfast
- 9:00 a.m. Opening Remarks: Samuel Milkes, Executive Director, Pa. Legal Aid Network, Inc.
- 9:15 a.m. National Foreclosure Settlement:
- A. Introductory comments by Attorney General or attorney from her office (invited)
 - B. Use of Funding in Pennsylvania: status of HEMAP
Panel: Attorney General's office, PHFA, Legal Services
Brian Hudson, Executive Director, Pennsylvania Housing Finance Agency
 - C. Substantive provisions of the national settlement
Jennifer Schultz, Community Legal Services
Michael McKeever, KLM Law Group
- 11:00 – 11:15 a.m. Break
- 11:15 a.m. Other National-Level Enforcement Efforts
Beth Goodell, Community Legal Services
- A. OCC Foreclosure Review
 - B. Results of HUD investigation
 - C. Forced-place insurance
- 12:15 – 1:15 p.m. Lunch
- 1:15 p.m. Updates on Foreclosure Related Programs
Michael Brown, Northwest Counseling Services (Philadelphia)
Christy Neuman, Housing Alliance of York
- A. FHA refinance with principal write-down
 - B. Home Affordable Modification Program (HAMP) changes
- 2:15 p.m. Discussion of important recent court decisions in foreclosure cases
John Goryl, Pennsylvania Housing Finance Agency
Catherine Martin, Neighborhood Legal Services Association
Jennifer Heverly, North Penn Legal Services
- 3:15 p.m. Wrap up

NATIONAL FORECLOSURE SETTLEMENT



Robo-signing and the AG Settlement

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Robo-Signing A Brief History

AG Settlement

<http://www.nationalmortgagesettlement.com/>

The players

- 49 State Attorneys General (not OK)
- US Department of Justice
- US Department of Housing & Urban Development
- 5 national servicers
 - Ally Financial, Inc. (GMAC)
 - Bank of America Corp. (Countrywide)
 - Special provisions re principal writedown
 - Citigroup, Inc. (Citigroup, Citibank, Citimortgage)
 - JP Morgan Chase & Co.
 - Wells Fargo & Co. (Wachovia)

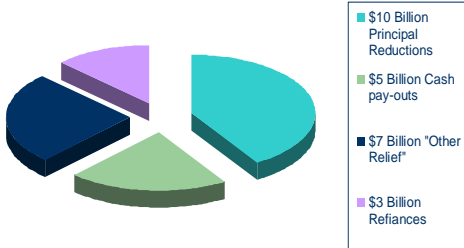
The players

- Fannie & Freddie loans are NOT included
- FHA-insured loans ARE included

General principals

- Money
 - To federal government
 - To states
 - To individuals
- Changes in how delinquent loans are serviced
- Changes in how loans are foreclosed
- Changes in how post-foreclosure process is handled
 - Forgiveness of debt
 - Addressing blighted & abandoned properties
- Waiver of government claims for robo-signing

Show us the money: \$25 Billion



The details: General

- Start & end dates:
March 1, 2012 – Sept. 1, 2016
- Summaries by NACBA & NCRL available in training materials on-line
- NACBA summary includes citations & bankruptcy-specific details

The details: General

- Official web site:
nationalmortgagesettlement.com
 - Access to Complaint & Consent Orders for each bank
- Enforcement:
 - Monitor: Joseph A. Smith, former banking secretary, N.C.
 - online tool for reporting servicing complaints:
www.mortgageoversight.com/report-client-issues/

The details: \$

- \$5 billion cash pay outs
 - \$.75 billion to federal
 - \$2.75 billion to states
 - \$69 mil to PA
 - Proposed uses in PA
 - Banking Dept to enforce settlement
 - AG's office for housing counseling, HEMAP, and PLAN?
 - \$1.5 billion to "Administrator" to distribute to individuals
 - \$1,800 - \$2,000 per claimant
 - People who lost their house 1/1/08-12/31/2011
 - Wrongfully foreclosed (robo-signer or proceeded "without discussion of alternatives")

The details: \$

- \$10 billion principal reductions
 - Must be delinquent or "imminent risk" of delinquency
 - Loan modification
 - DTI 31% as aim
 - Payment of P&I must be reduced at least 10%
 - LTV ≤ 120% after mod
 - Available for certain 2nd liens, too
 - When is \$10 billion really not \$10 billion?
 - MORTGAGE MATH!
 - Can get up to \$1.25 credit for each \$1 of reduction
 - With extra incentives, could be as great as \$1.56 per \$1

The details: \$

- \$7 billion "other forms of relief"
 - Servicing relief
 - Unemployment forbearance (100%)
 - Unemployment forgiveness (5%)
 - Transitional assistance
 - Short sales
 - Cash-for-keys (100%)
 - Waiving deficiency debt (10%)
 - Blighted properties
 - Donating
 - Demolishing
 - Forgiving debt on abandoned homes

What are the states doing w/ the \$?

- Pro Publica Map:
<http://www.propublica.org/special/where-are-the-foreclosure-deal-millions-going>
 - Total \$2.54 B
 - Aid to homeowners \$545 M
 - General funds \$967 M
 - Undetermined \$999.5 M
- Pa. = 66.5 M, still listed as "undetermined"

The details: Servicing Standards

- Statements in court filings based on competent & reliable evidence & personal knowledge
- Signatures by hand & dated
- Must notify borrower or counsel of robo-signed documents in current cases

The details: Servicing Standards

- No late fees if timely full payment with exception of prior late fees
- No late fees during evaluation of complete loan mod application
- No property preservation fees during loss mit application or performance unless necessary
- No BPO fees more often than 12 mos

The details: Servicing Standards

- No dual track IF
 - Substantially complete packet received when
 - Loan not already referred to foreclosure
 - Less than 4 months (120 days) delinquent
- Dual track = servicer moves ahead with foreclosure while evaluating a loan mod application

The details: Servicing Standards

- Servicer must promptly notify borrower of new foreclosure sale date if sale is continued rather than cancelled
- Single point of contact (SPC): Servicer must establish potentially eligible first lien borrowers
- SPC for bankruptcy must be specially trained

The details: Servicing Standards

- Transferring of servicing rights should not terminate pending loan modification
 - Ex. A-IV.M
 - Current servicer has to inform successor
 - Agreement of transfer has to obligate successor to accept completed loan mod, continue processing pending loan mod
 - Borrowers ARE 3rd party beneficiaries of these provisions in settlement

Does the settlement hurt my clients?

- No waiver of any individual claims
 - Even if client takes individual cash pay-out under the settlement (just an offset any future recovery)
- IF they follow the settlement, could mean better chance of favorable resolutions
- No third-party beneficiaries, but creates standards that the servicers should be following (equitable defenses)

Could anyone actually benefit?

- People with underwater mortgages
 - Best if delinquent (principal write-downs)
 - Possibility of refi if current
- People trying to do short sales
- People trying to resolve their delinquencies?
 - Single point of contact
 - Limits on dual tracking
 - Limits on fees
 - Better options for unemployment forbearances
- People who lost their home in foreclosure
 - Money from settlement
 - Better cash-for-keys offers
 - More (formal) waiver of deficiencies
 - Better handling of dilapidated properties (less change former owner will have problem with local government)

And on the off chance they don't follow the agreement . . .

- Independent monitor
- Timetables requiring compliance
 - Incentives to do more in first year (gets \$1.25 credit for \$1)
 - 75% must be spent by end of year 2
 - 100% must be spent by end of year 3
 - For any dollar not spent by the deadline, company must pay \$1.40 to the government (50/50 state & fed)
- Additional court sanctions permitted
 - Up to \$1 million for first violation
 - Up to \$5 million for subsequent violations
- Quarterly reports submitted to monitor by servicers
 - "Right to Cure" any violation before penalties kick in

Final Thoughts . . .

Will our clients get principal reduction?

The New York Times

May 7, 2012. **Bank of America** has started sending letters to thousands of homeowners in the United States, offering to forgive a portion of the principal balance on their mortgages **by an average of \$150,000 each.**

Final Thoughts . . .

“Nothing is going to change because the deal doesn’t actually require anything to change.”

OTHER NATIONAL-LEVEL ENFORCEMENT EFFORTS



OCC Foreclosure Review

- Office of the Comptroller of the Currency
- “Independent Foreclosure Review” (IFR)
- Deadline = July 31,2012
- Borrowers must request review on official form
- Must show financial injury as a result of errors in foreclosure actions on their homes in 2009 or 2010

OCC Foreclosure Review

- Covers 14 subsidiary servicers of banks regulated by the OCC
- America's Servicing Company, Aurora Loan Services, BAC Home Loans Servicing, Bank of America, Beneficial, Chase, Citibank, CitiFinancial, CitiMortgage, Countrywide, EMC, Everbank/Everhome Mortgage Company, Financial Freedom, GMAC Mortgage, HFC, HSBC, IndyMac Mortgage Services, MetLife Bank, National City Mortgage, PNC Mortgage, Sovereign Bank, U.S. Bank, Wachovia Mortgage; Washington Mutual, Wells Fargo; Wilshire Credit Corporation.

OCC Foreclosure Review

- Each servicer hired its own “independent” consultant to conduct the reviews
- Call 888-952-9105
- www.federalreserve.gov/consumerinfo/independent-foreclosure-review.htm
- www.occ.gov/independentforeclosurereview

OCC Foreclosure Review

- Wall Street Journal recently reported:
 - 136,000 people have applied (3% of 4.3 million who were in foreclosure in 2009 or 2010)
 - No borrowers have received compensation
 - Officials haven't agreed on penalties
 - Housing counselors said many borrowers were confused by the application forms mailed out by banks; the forms look like scam letters and confuse consumers.

HUD Investigation

- HUD's Office of Inspector General
- March 12, 2012 reports on investigation of 5 largest FHA servicers
 - CitiMortgage
 - Ally Financial
 - fyi, GMAC filed ch. 11 bankruptcy in May 2012
 - J.P. Morgan Chase
 - Bank of America
 - Wells Fargo

HUD Investigation

- Memorandum of Review, Memorandum No.
 - 2012-KC-1801, Citi
 - 2012-PH-1801, Ally
 - 2012-CH-1801, Chase
 - 2012-FW-1801, Bank of America
 - 2012-AT-1801, Wells Fargo

HUD Investigation

- Citi
 - Did not have effective control over its foreclosure process
 - Employees confirmed they signed documents without reviewing/knowing content
 - Notaries did not witness signatures
 - Foreclosure lawyers may have improperly prepared documents

HUD Investigation

- Ally
 - Refused to allow interviews with employees
 - Refused to provide requested documents, subpoena produced only 96 of 113 files
 - Did not have effective control over its foreclosure process
 - Outside evidence confirmed employees signed documents without reviewing/knowing content

HUD Investigation

- Chase
 - Eliminated quality control division in 2008
 - Out of 36 affidavits reviewed for support for amounts claimed due, in only 4 was supporting information found
 - Of the 4 files with supporting information, 3 were inaccurate re late fees & interest compared to info in Chase's servicing system

HUD Investigation

- BoA, Wells
 - More of the same

Forced-Place Insurance

- Bloomberg News: "Look Who's Pushing Homeowners Off the Foreclosure Cliff", May 6, 2012
 - loss ratio = \$.20 = insurance companies are charging sky-high premiums
 - Banks receive commissions on the policies
 - Banks make even more money by "reinsuring" – take back some of the risk of payouts, which turn out to be low

Forced-Place Insurance

- American Banker Nov. 9, 2010, "Ties to Insurers Could Land Mortgage Servicers In More Trouble"
 - Cost can be 10 times as much as regular policies, can push borrowers into foreclosure and worsen loss to investors

Forced-Place Insurance

- Servicers outsource all insurance servicing functions, including monitoring loans and deciding when to force place
- Insurer charges negligible amount for doing this, benefit is the right to place the insurance
- Coverage often far more than debt balance or property value

Forced-Place Insurance

- AG Settlement
 - Servicers must continue to pay regular insurance if escrowed but lapse in payment
 - Coverage = Greater of replacement value, last known amount of coverage or outstanding loan balance; price = commercially reasonable
 - Reasonable efforts to work w/ borrower to continue or reestablish the existing policy if payments are escrowed

Forced-Place Insurance

- Fannie Mae "Servicing Guide Announcement SVC-2012-04", March 13, 2012
- Coverage amount
 - loans up to 119 days in default, coverage must be last known coverage amount
 - loans 120 days or more in default, coverage must be changed to the lesser of unpaid principal balance or property value
- Refunds must be made within 15 days of receipt of evidence of coverage from the borrower.

Forced-Place Insurance

- Fannie Mae, Cnt.
- Refunds must be made within 15 days of receipt of evidence of coverage from the borrower
- Servicer must exclude from reimbursement request amounts of commissions, costs for insurance tracking or administration, any other costs beyond the actual cost of the premium

Forced-Place Insurance

- New York Department of Financial Services t hearings, May 18-21
- Consumer Financial Protection Bureau
 - Regulations in process
- Class action lawsuits

UPDATES ON FORECLOSURE RELATED PROGRAMS



Avoiding Foreclosure Update 2012 June 2012



About northwest counseling Service

- ❑ Non Profit Agency
- ❑ No Cost Housing Counseling Services
- ❑ Any Service Related To A Home
- ❑ Specialize In Mortgage Delinquency
- ❑ 96% Rate In Keeping Residents In Homes
- ❑ HUD Certified/OHCD Funded
- ❑ 33 Agencies Like Us In The City



215-324-7500



How to Avoid Foreclosure: Financial Literacy

□ Director of
Business
Development
, NWCS

□ Housing
Counselor

□ Help
Homeowners
in Distress



Michael Brown



FHA Principal Reduction Alternative

- You may be eligible for PRA if:
- Your mortgage is not owned or guaranteed by Fannie Mae or Freddie Mac.
- You owe more than your home is worth.
- You occupy the house as your primary residence.
- You obtained your mortgage on or before January 1, 2009.
- Your mortgage payment is more than 31 percent of your gross (pre-tax) monthly income.
- You owe up to \$729,750 on your 1st mortgage.
- You have a financial hardship and are either delinquent or in danger of falling behind.
- You have sufficient, documented income to support the modified payment.
- You must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction

> Program Availability

- More than 100 servicers participate in HAMP and can evaluate homeowners for principal reduction. Participating servicers are required to develop written standards for PRA application. The largest servicers include Bank of America, CitiMortgage, JP Morgan Chase, and Wells Fargo.

Extension of HAMP into 2013

- Extension of HAMP into 2013. HAMP was actually set to expire for new trial modifications at the end of the year, but it was extended it to the end of 2013. HARP, the newly-tweaked refinancing program, also has authority through 2013. This means that the bulk of the money left in HAMP accounts can actually get used.

Expanding Eligibility

- Borrowers with second liens or additional financial exposure (like medical bills), for example, will have the chance to enter HAMP for another evaluation with what is called “more flexible debt-to-income criteria to expand modification assistance to borrowers with higher levels of secondary debt.” In addition, properties intended for rental will be able to get eligibility for HAMP.

- New principal reduction enhancements. Under the new plan, Treasury will triple the incentive payments for “investors who agree to reduce principal for borrowers.” Also, there will be principal reduction incentives for GSE-owned or guaranteed loans.



Similar to cell phone Providers HAMP has expanded its coverage area

To mitigate FHFA's concerns about losing taxpayer money in the deal Treasury will “pay principal reduction incentives to Fannie Mae or Freddie Mac if they allow servicers to forgive principal in conjunction with a HAMP modification.”



Modify or Refinance Your Loan for Lower Payments

- **Home Affordable Modification Program (HAMP):** The typical HAMP modification results in a 40 percent drop in a monthly mortgage payment.
- **Principal Reduction Alternative (PRA):** PRA was designed to help homeowners whose homes are worth significantly less than they owe by encouraging servicers and investors to reduce the amount you owe on your home. [Click Here for more information.](#)
- **Second Lien Modification Program (2MP):** If your first mortgage was permanently modified under HAMP SM and you have a second mortgage on the same property, you may be eligible for a modification or principal reduction on your second mortgage under 2MP. Likewise, If you have a home equity loan, HELOC, or some other second lien that is making it difficult for you to keep up with your mortgage payments, learn more about this MHA program. [Click Here for more information.](#)
- **Home Affordable Refinance Program (HARP):** If you are current on your mortgage and have been unable to obtain a traditional refinance because the value of your home has declined, you may be eligible to refinance through HARP. HARP is designed to help you refinance into a new affordable, more stable mortgage. [Click Here for more information.](#)

“Underwater” Mortgages

In today's housing market, many homeowners have experienced a decrease in their home's value. Learn about these MHA programs to address this concern for homeowners.



Home Affordable Refinance Program (HARP)

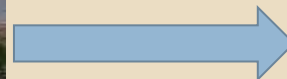


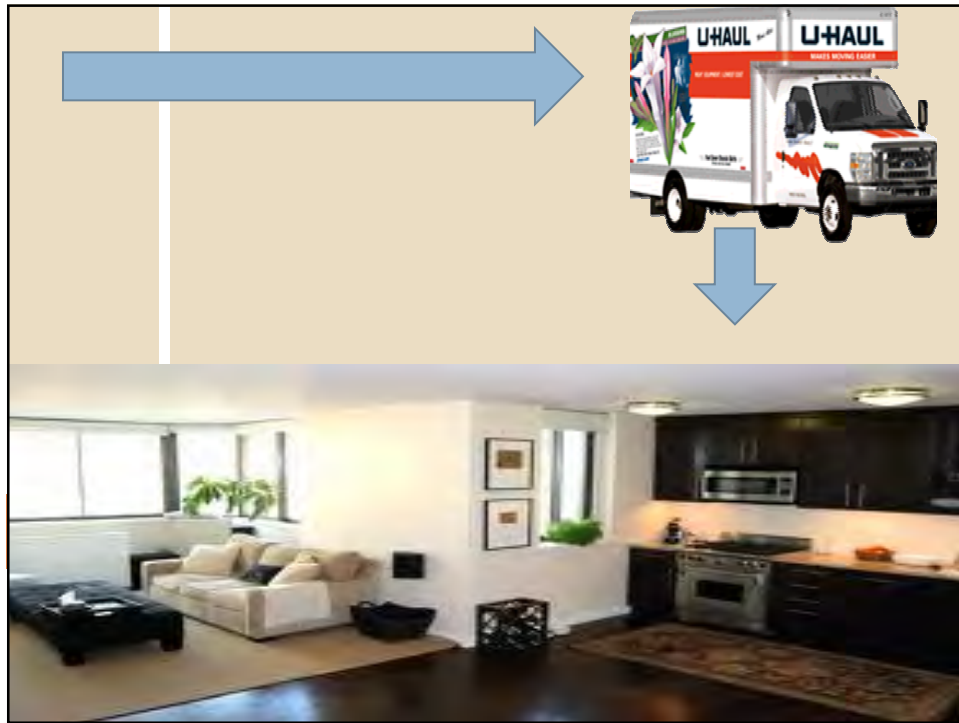
PRA was designed to help homeowners whose homes are worth significantly less than they owe by encouraging servicers and investors to reduce the amount you owe on your home.

Treasury/FHA Second Lien Program (FHA2LP): If you have a second mortgage and the mortgage servicer of your first mortgage agrees to participate in FHA Short Refinance, you may qualify to have your second mortgage on the same home reduced or eliminated through FHA2LP. If the servicer of your second mortgage agrees to participate, the total amount of your mortgage debt after the refinance cannot exceed 115% of your home's current value.

Assistance for Unemployed Homeowners

- Home Affordable Unemployment Program (UP)
- Emergency Homeowners' Loan Program (EHL), Substantially Similar States: If you live in Connecticut, Delaware, Idaho, Maryland, or Pennsylvania
- FHA Forbearance for Unemployed Homeowners:





FHA-Home Affordable Modification Program (FHA-HAMP)

- Allows homeowners to modify their FHA-insured mortgages to reduce monthly mortgage payments and avoid foreclosure.
- **Nature of Program:** FHA-HAMP allows 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.
- 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. The mortgagor's monthly payment required during the trial payment plan must be the amount of the future modified mortgage payment. The Mortgagee must service the mortgage during the trial period in the same manner as it would service a mortgage in forbearance. If the mortgagor does not successfully complete the trial payment plan by making the three payments on time, the mortgagor is no longer eligible for FHA-HAMP.

FHA PARTIAL CLAIM

UNDER THE PARTIAL CLAIM OPTION, A LENDER WILL ADVANCE FUNDS ON BEHALF OF A BORROWER IN AN AMOUNT NECESSARY TO REINSTATE A DELINQUENT LOAN (NOT TO EXCEED THE EQUIVALENT OF 12 MONTHS PITI). THE BORROWER, UPON ACCEPTANCE OF THE ADVANCE, WILL EXECUTE A PROMISSORY NOTE AND SUBORDINATE MORTGAGE PAYABLE TO HUD. CURRENTLY, THESE PROMISSORY OR "PARTIAL CLAIM" NOTES CARRY NO INTEREST AND ARE NOT DUE AND PAYABLE UNTIL THE BORROWER EITHER PAYS OFF THE FIRST MORTGAGE OR NO LONGER OWNS THE PROPERTY. FOLLOWING REINSTATEMENT, THE LENDER WILL FILE A "PARTIAL" CLAIM FOR THE AMOUNT OF THE ADVANCE PLUS THE LENDER'S INCENTIVE FEE, AND FORWARD A COPY OF THE RECORDED DOCUMENTS TO HUD. A CONTRACTOR RETAINED BY HUD WILL SERVICE THE PARTIAL CLAIM LIENS.

Changes to HAMP, Making homes affordable for 2012

- Individuals who have been declined for the Home Affordable Modification Program (HAMP) or MHA program may find assistance under the Tier 2 level of eligibility through the following changes:
- **1. Expansion of eligibility:** Homeowners who did not qualify under the HAMP Tier 1 program may apply under Tier 2. The new guidelines calculate debt-to-income ratios by taking other debt into account.
- **2. Extension of eligibility to rental property owners:** Owners of investment properties will be eligible to apply for assistance under Tier 2 if they are current on their investment payments.
- **3. Fannie Mae and Freddie Mac to receive same incentives:** If either provider allows servicers to forgive principal with a HAMP modification, the United States Treasury will pay the same principal reduction incentives.
- **4. Triple balance-reduction incentives:** HAMP will pay between 18 cents and 63 cents for every dollar the lenders take from the mortgage principal. These numbers were originally between 6 cents and 21 cents.

https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/escalated_case_docs/hampresolutionmatrix.pdf

HAMP Tier 2

- A loan that passes basic HAMP eligibility (originated before 1/1/09, 1-4 units, documented hardship)
 - but did not receive a HAMP modification
 - may be eligible for HAMP Tier 2
 - Effective date = June 1, 2012
-

HAMP Tier 2

- Reasons for not receiving a HAMP modification can include
 - Failed "Tier 1" criteria: payment 31% of gross income; fails NPV; excessive forbearance
 - Default on Tier 1 trial plan
 - Default on prior permanent mod, at least 12 months have passed or changed circumstances
-

HAMP Tier 2

- Reasons for not receiving a HAMP modification can include
 - Permanent mod not given for any reason except misrepresentations
 - Property is not owner-occupied
-

HAMP Tier 2

Affordability standard

- Instead of 31% payment to gross income target, 25%-42%
 - modified P&I payment must be at least 10% reduction from pre-modification P&I payment
-

HAMP Tier 2

Rental property may be eligible for HAMP Tier 2 if:

- Two or more mortgage payments are unpaid for
 - Borrower does not own more than five single family units
 - Property occupied by a tenant as a principal residence or is vacant
-

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Pennsylvania Legal Aid Network
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Case Summaries

Bank of New York Mellon v. Ellis, PA Super April 23, 2012 (summary judgment in foreclosure reversed re no showing of compliance with FHA servicing requirements)

Beneficial Consumer Discount Co. v. Vukman, 2012 PA Super 18 (court set aside mortgage foreclosure sheriff sale based on defect in Act 91 pre-foreclosure notice)

Bennett et al. v. A.T. Masterpiece Homes, PA Super. March 6, 2012 (a UDAP issue, UDAP sometimes being used in cases involving mortgage companies)

Cave v. Saxon Mortgage Services Inc. and Ocwen Loan Servicing LLC, 2012 U.S. Dist. LEXIS 75276 (E.D. Pa. May 30, 2012). Court declined to dismiss breach of contract count in class action case seeking to enforce HAMP trial plan.

Healey v. Wells Fargo, 2012 WL 994564 (Pa.Com.Pl.), CCP Lackawanna, March 12, 2012. Court declined to dismiss (preliminary objections) breach of contract, UDAP, fraud in the execution and promissory estoppel counts in action seeking to enforce HAMP trial plan. Court sustained p.o.'s re fraud in the inducement, negligent misrepresentation, infliction of emotional distress. (Note: Wells provided borrowers a copy of the trial plan signed by a Wells employee.)

Jones v. Wells Fargo, 2012 Bankr LEXIS 1450 (E.D. La. 2012) (debtor awarded punitive damages of \$3.1 against Wells Fargo for servicing abuses). Court declared that Wells Fargo exhibited "reprehensible" The court had previously found that the bank improperly applied payments to interest and fees instead of principal and improperly charged the debtor more than \$24,000 in fees.

WMC Mortgage v. Baker, 2012 WL 628003 (E.D.Pa. Feb. 28, 2012) (TILA rescission upheld in case where securitization trust proceeded with foreclosure case even though borrower had rescinded the loan within 3 days of origination and original lender had repurchased the loan from the trust.

The bursting of the housing bubble led to a massive spike in home foreclosures across the country, deepening the recession and slowing the economic recovery. A number of federal, state and local programs have been launched in an effort to help homeowners avoid foreclosure and remain in their homes. Most of the programs have been slow and ineffective when it comes to offering homeowners some relief.

Philadelphia's response to the problems of homeowners facing foreclosure came on April 16, 2008, when Common Pleas Court President Judge C. Darnell Jones and Trial Division Administrative Judge D. Webster Keogh issued an Order delaying Sheriff Sales (i.e., the official auction of collateral properties in satisfaction of mortgage debt) of owner occupied residential premises on the April and May 2008 Sheriff Sale list. That Order required a Conciliation Conference to be scheduled between owners and the lenders/servicers that are party to the action. Initially, the Philadelphia Residential Mortgage Foreclosure Diversion Program (Diversion Program) was set to expire on December 31, 2009 although by Order dated December 17, 2009, the Diversion Program was made a permanent fixture of the Court.

The Diversion Program mandates a face-to-face Conciliation Conference for all new foreclosure actions. During the conference, eligible homeowners (with counselors and/or legal representatives) meet with the lenders/servicers to explore alternatives to Sheriff Sale. Eligible homeowners are sent information about the Diversion Program, including the date of their Conciliation Conference, when they are served with the mortgage foreclosure complaint. Several non-profit agencies, funded by the City, conduct door-to-door outreach to homeowners; the purpose of that outreach is to educate homeowners about the Diversion Program and encourage them to participate in the process. Homeowners are instructed to first call the SaveYourHomePhilly Hotline, staffed by Philadelphia Legal Assistance, to

schedule an appointment for the homeowner to meet with a housing counselor to discuss workout options. (This effort is supported by both private philanthropy and the City of Philadelphia.) Homeowners are able to freely access housing counseling services as well as legal assistance from Community Legal Services, Inc., Philadelphia Legal Assistance or Philadelphia VIP (Volunteers for the Indigent Program). Once in Court, if the collective efforts of the homeowner (with their counselor or attorney) and the plaintiff do not progress, either party can access one of the Judges Pro Tem (JPT) to facilitate the process. JPTs are attorneys who perform this function on a pro bono basis.

Philadelphia's goals for the Diversion Program are to:

- Keep homeowners facing foreclosure in their homes;
- Preserve and protect neighborhoods from the ravages of foreclosed properties;
- Intervene early in the processing of foreclosure cases in order to achieve a measure of judicial efficiency; and
- As a case management tool, to transform a docket that is unique because of the over 90% pro se nature, and provide a support mechanism for homeowners so that they can have a substantive discussion with Plaintiff's counsel about resolution long before a case progresses to trial (that is, if a default judgment is not entered).

Along with those goals are an inherent set of questions, the answers to which allow us to understand progress toward those goals. These questions are:

1. What is the magnitude of the mortgage foreclosure problem in Philadelphia? What part of that problem is being addressed by the Diversion Program?
2. Once a case is deemed eligible (i.e., residential owner-occupied properties) for

this intervention, what results are achieved?

3. Does the Diversion Program facilitate the case processing efficiency of the Court?
4. Has the Diversion Program made a difference in how foreclosure cases progress from foreclosure filing to Sheriff Sale?
5. Assuming the result is a “saved home”, how sustainable is the resolution - and are there patterns (e.g., demographic, economic, spatial) reflecting that some homeowners are more likely to remain in their home than others?
6. Has the Diversion Program improved overall access to the judicial process for Philadelphia homeowners facing foreclosure? Are the outcomes equal?

With grants from the Open Society Institute and the William Penn Foundation, TRF answered this set of basic questions about the outcomes and impacts of the Diversion Program. After gathering Court Orders on nearly 16,000 cases handled by the Diversion Program from inception through March of 2011, conducting interviews with homeowners and “ground-truthing” our results with experts, we conclude the following:

1. What is the magnitude of the foreclosure problem in Philadelphia and what part of that problem will the Diversion Program address?

During the pendency of the program, there were in excess of 8,000 foreclosure filings per year and the Diversion Program addressed between 60% and 70% of that caseload in each year of its existence.

2. Once a case is deemed eligible, what results are achieved?

Approximately 70% of all eligible homeowners in foreclosure avail themselves of the Diversion Program (i.e., approximately 30% fail to appear). Of those who are eligible and participate, approximately 35% end up with an Agreement

between the plaintiff and the homeowner. Sheriff sales are ordered in approximately 16% of the cases and those are, more frequently, among the oldest cases at the time of entry into the Diversion Program.

3. Does the Diversion Program facilitate the case processing efficiency of the Court?

Evidence suggests that participants in the Diversion Program touch the court, on average, fewer than two times. The average (mean) case spends 54 days in the Diversion Program. Given what we know about the typical time for a case to move from foreclosure filing to final resolution – not counting when active litigation is involved – the average is well within the range of what was previously typical for residential foreclosure cases.

4. Has the Diversion Program made a difference in how foreclosure cases progress from foreclosure filing to Sheriff Sale?

Although this analysis is complex and the data are incomplete, it appears that the trajectory of a case from foreclosure filing to Sheriff Deed filing is substantially impacted. There is an inflection point in that trajectory that corresponds to the inception of the Diversion Program showing that for the year prior to the Diversion Program 27% of “eligible cases” ended up with Sheriff Deeds filed – meaning that 27% of homeowners were losing their homes. The inception of the Diversion Program immediately dropped that percentage to 14.5% after the first six months and then to 5.7% thereafter.

Confidence in this finding must be tempered somewhat by the fact that there were several changes in the housing market environment and business practice of the Court and Sheriff of Philadelphia that could produce a reduction. Yet, the temporal correspondence with the inception of the Diversion Program is suggestive that it - not just business practices - did have a positive impact on the likelihood that a homeowner in foreclosure would keep their home.

5. Assuming the result is a “saved home”, how sustainable is the resolution – and are there patterns (e.g., demographic, economic, spatial) reflecting that some homeowners are more likely to remain in their home than others?

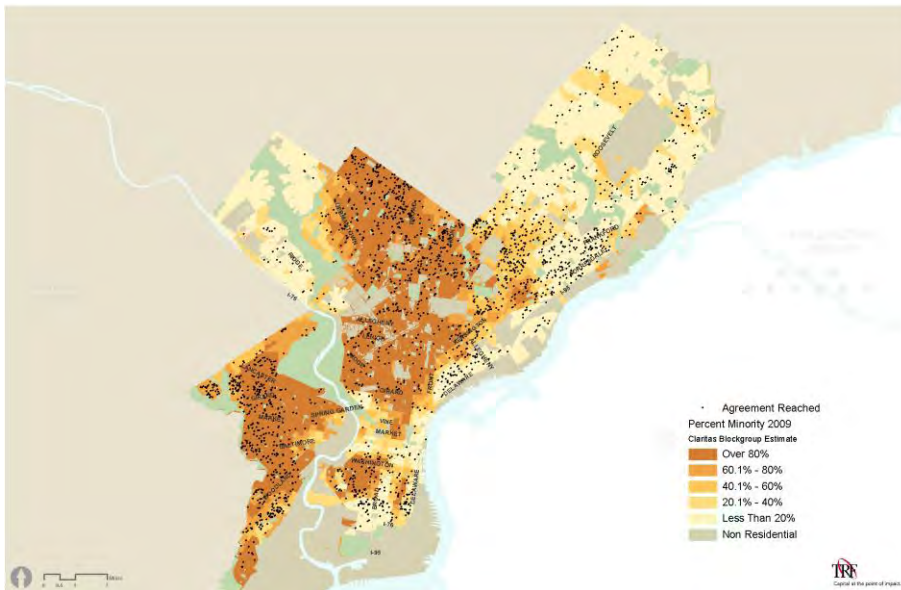
Using data representing the first year’s worth of Agreements – giving these Agreements time to “age” – we observe that 85% of those homeowners are still in their home more than 18 months later. Approximately 30% of all homeowners with Agreements have had subsequent foreclosure activity, but those have not yet forced people from their homes. Is the 85% remaining in the home unusual? Among those who did not avail themselves of the benefits of the Diversion Program (i.e., failed to appear), 50% of them are no longer in their homes.

6. Has the Diversion Program improved overall access to the judicial process for Philadelphia homeowners facing foreclosure? Are the outcomes equal?

Our best, albeit indirect, evidence is that it has improved access. Foreclosures in Philadelphia are clustered in lower income and minority areas; that spatial pattern has weakened somewhat in the last few years. Nevertheless, a spatial analysis of participation in the Diversion program reveals that aside from a small effect of the percent White not Hispanic in a Census tract (showing that areas with higher percentages White not Hispanic have slightly higher percentages failure to appear outcomes) there is no discernable pattern suggestive that lower income communities or communities of color are unable to access the system. Moreover, assuming homeowners participate, low income and

minority communities are achieving agreements at similar rates as higher income and majority communities. This suggests that the Diversion Program is offering its benefits to Philadelphia homeowners on an even-handed basis.

This report provides data that show that the Diversion Program has made progress in meeting its initial goals and has done so in an equitable manner.



Location of Agreements Reached through Diversion Program (inception through June, 2009) and Racial Composition of Area



NO
PLACE
LIKE

HOME

PHILADELPHIA'S APPROACH
TO FORECLOSURE PREVENTION

NO PLACE LIKE HOME

Philadelphia's Approach to Foreclosure Prevention

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EXECUTIVE SUMMARY

Since 2008, cities and states across the nation have worked to create new laws and programs to address the mortgage-foreclosure crisis and to help homeowners to keep their homes. The two primary program types adopted by state and local governments are designed to serve two goals: (1) to facilitate mediation or negotiation between homeowners and lenders/servicers to reach mortgage loan-modification agreements; and (2) to provide homeowners with loans to help eliminate delinquency and/or to temporarily fund monthly mortgage payments. Philadelphia's foreclosure-prevention efforts utilize both types of programs: a local mediation program that mandates court-supervised negotiations between the parties and a state bridge-loan program that provides loans to households temporarily unable to pay their mortgages due to unemployment, sickness, or other reasons beyond their control. The city increased the positive impact of these programs by funding effective outreach, a paralegal-staffed telephone hotline, housing counselors, volunteer and legal services attorneys, and other important supports.

This 2011 study, conducted by Regional Housing Legal Services with funding from the William Penn Foundation, details how Philadelphia's foreclosure-prevention model has worked, how it can be replicated in other cities, and how it can be improved to better serve at-risk homeowners. In concert with this qualitative study based on interviews with over 60 stakeholders, The Reinvestment Fund (TRF), a national leader in the financing of neighborhood revitalization, has completed a quantitative study of one program explored in depth in this report, the Philadelphia Residential Mortgage Foreclosure Diversion Program (Diversion Program). Key findings of The Reinvestment Fund's 2011 study titled *Philadelphia Residential Mortgage Foreclosure Diversion Program: Initial Report of Findings* are incorporated within this report.

Philadelphia's leaders quickly crafted and implemented a foreclosure system utilizing existing resources and filling holes where needed.

In just seven weeks, stakeholders including the courts, city government, lenders'/servicers' attorneys, and city-funded nonprofits partnered to create the Diversion Program. The Diversion Program mandates face-to-face negotiations between the at-risk homeowner and the lender/servicer to determine whether modifications to mortgage loan terms can prevent foreclosure. In addition, Philadelphians had access to a state-run bridge-loan program, Homeowners' Emergency Mortgage

Assistance Program (HEMAP), founded in 1983 to help homeowners who can not pay their mortgage through no fault of their own. Pennsylvania Housing Finance Agency's HEMAP program has a two-decade-long track record of preventing foreclosure. Two additional federal tools were added to Philadelphia's arsenal in 2009 and 2011, although their impact on foreclosure outcomes is not fully known: Home Affordable Modification Program (HAMP) and Emergency Homeowners' Loan Program (EHLA). HAMP, a federal loan-modification program, significantly impacted local negotiation standards and the housing counselors' workload but does not appear to result in many final loan modifications, based upon interviews with housing counselors. EHLA was introduced in Pennsylvania in Spring 2011, with \$105 million available to loan to Pennsylvania homeowners with difficulty paying their mortgages. There is a September 30, 2011 deadline for all funds to be committed. As of July 15, 2011, \$8.8 million of this money has been committed for loans to 270 Philadelphia at-risk homeowners. EHLA loan commitments up to July 15, 2011 for all of Pennsylvania total \$28.6 million. Regional Housing Legal Services will continue to monitor EHLA's impact.

Philadelphia Prevention Works

Data on the Diversion Program from The Reinvestment Fund with Analysis from Regional Housing Legal Services (April 2008 to May 2011)*

PARTICIPATION RATE: 70% of homeowners in foreclosure
(Approximately 11,200 out of 16,000 homeowners participated in the Diversion Court program.)

ESTIMATED AVERAGE COST TO HELP EACH HOUSEHOLD: \$750

HOUSEHOLDS WHO COMPLETE PROCESS AND REACH AGREEMENTS: 35%
(Approximately 3,900 homeowners; agreements may not allow them to keep their homes.)

HOMEOWNERS REPRESENTED BY A LAWYER WHO MADE A FORMAL APPEARANCE IN COURT: 4.5% (50% private/50% legal services)

HOMEOWNERS WHO REACHED AN AGREEMENT IN THE FIRST YEAR OF THE PROGRAM AND ARE STILL IN THEIR HOMES IN 2011: 85%
(Approximately 850 out of 1,000 homeowners; 30% have subsequent foreclosure filings.)

HOMES SOLD AT SHERIFF'S SALE: 16% of households who participated in the Diversion Program (approximately 1,825 homeowners)

ESTIMATED AVERAGE COST TO SAVE A HOME: \$3,310

**RHLS analysis, based upon data from The Reinvestment Fund, is discussed on pages 13 to 15 and 52 to 55.*

Philadelphia Prevention Works

Data from the Pennsylvania HEMAP Program (April 2008 to July 2010)

NUMBER OF PHILADELPHIANS WHO APPLIED FOR HEMAP: 4,756

PHILADELPHIA APPLICATIONS APPROVED FOR HEMAP: 1,025

APPROVAL RATE: 22%

PHILADELPHIA HEMAP LOANS CLOSED: 623

AVERAGE COST TO HELP EACH HOUSEHOLD STATEWIDE: \$1,600

LOANS REPAYED STATEWIDE: 85%

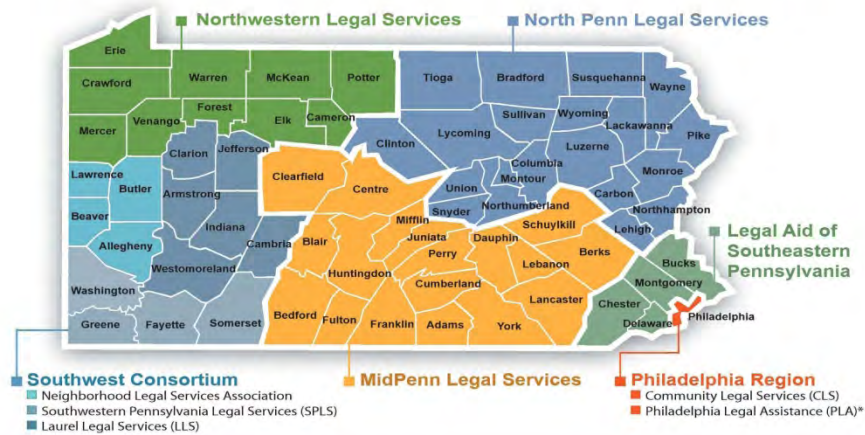
HEMAP RECIPIENTS WHO LOSE THEIR HOMES STATEWIDE: <15%

AVERAGE LOAN SIZE STATEWIDE: \$11,000

IMPACT ON STATE CREDIT RATING: POSITIVE *(Moody's, an independent credit-rating agency, found that it strengthened PHFA's loan portfolio and bond program.)*

Philadelphia provided foreclosure-prevention services to at least 11,200 homeowners in its first three years. The Diversion Program's 70% participation rate was achieved through extensive outreach that included targeted door-knocking at homes of delinquent homeowners, a telephone hotline, public-service announcements, and mandatory negotiations. Compare the 70% participation rate, for instance, with a 30% rate for the opt-in mediation foreclosure-prevention program in Cleveland (Cuyahoga County, Ohio). Thirty-five percent of those who completed the Diversion Program obtained an agreement with the lender/servicer. There is limited data on the nature of the agreements, but the majority of the early agreements appear to have allowed the owners to remain in their homes because 85% of homeowners who reached an agreement in the first year are still in their homes in 2011, according to The Reinvestment Fund's study. In addition, 623 Philadelphia homeowners received HEMAP loans during this period. We do not know how many of these homeowners also participated in the Diversion Program. Approximately 80% received a one-time payment to eliminate their delinquency, while 20% received ongoing payments for up to three years to make their mortgage payments while they recovered financially. Data on HEMAP default rates for Philadelphia during this period are not available, but default rates over the 18-year life of the HEMAP program average 15%. While 16% of total at-risk homeowners and 2.1% of homeowners whose foreclosure suits were filed after April 2008 lost their homes to sheriff's sale, the majority have not resolved their foreclosures and continue to participate in one or more of the available programs.

Pennsylvania Legal Aid Network (PLAN)



Specialized Programs

These programs provide statewide legal expertise for addressing specialized legal problems or serving populations with special needs.

- Community Justice Project (CJP)
- Friends of Farmworkers (FoF)
- Pennsylvania Health Law Project (PHLP)
- Pennsylvania Institutional Law Project (PILP)
- Pennsylvania Utility Law Project (PULP)
- Regional Housing Legal Services (RHLS)

*Non-PLAN Funded Program