

Pennsylvania Legal Aid Network
Presents a
Statewide Mortgage Foreclosure Training

*An all day session to benefit
legal services providers
and housing counselors*

Crowne Plaza Harrisburg
2 N. Second Street
Harrisburg, PA

December 7, 2010
9:00 AM to 4:15 PM

(5.5 CLE Credits for Attorneys)

MORTGAGE FORECLOSURE PREVENTION

The Housing Counselor's Role

Understand the Homeowner's Objectives and Needs – The housing counselor provides assistance once there is an understanding of what the homeowner is trying to accomplish. This requires very specific information. The more information provided, the easier it will be for the housing counselor to assess the homeowner's expectations and situation.

Determine Time Constraints – The housing counselor needs to identify any deadlines the homeowner faces, especially if there is a foreclosure pending. If a homeowner receives an Act 91 Notice and wishes to apply for HEMAP assistance, then the homeowner must do so through the housing counseling agency. All HEMAP applications must be completed by a housing counselor. HEMAP has time specific deadlines, so it is imperative that the counselor is soliciting detailed information from the homeowner.

Establish Reasons for Default – If applying for HEMAP assistance or communicating with a lender, the homeowner partners with the housing counselor or legal services lawyer to draft a hardship letter that establishes and explains reasons for the default. The letter should be in the homeowner's words.

Assist Homeowner in Reaching a Solution – Counselors must determine if a homeowner is eligible for Making Home Affordable, develop a budget for the client and develop a realistic written plan action plan for the client.

Consider Ways to Increase Homeowner's Income or Available Cash – The homeowner needs to work with the housing counselor to find other sources of income. Perhaps a family member in the house can bring in additional money with a part time job. Maybe family members can assist; or, perhaps their Church has an assistance fund.

Assist Homeowner in Reducing Other Debt – Other mortgages or liens associated with the house must also be taken into consideration when it comes to foreclosure intervention. The housing counselor, along with the homeowner, tries to determine if there are any property taxes unpaid; any federal or state taxes are due; homeowners insurance is up to date; default mortgage insurance is up to date; there are other junior liens; utilities are past due or cut-off; and, any home repair needs.

Certain unpaid utilities could make the house uninhabitable for all family members. The housing counselor will try to get any past due utilities on the smallest payment schedule possible.

Some home repairs may make the house uninhabitable. It is in the best interest of the homeowner to make the housing counselor aware of these situations.

The housing counselor goes over all debt and makes cash-flow suggestions. One such suggestion may be not to pay any credit card debt. While it will have a negative impact on the homeowner's credit history, the credit more than likely has already been impacted by the late mortgage payments. Rather than paying credit cards, the money could be used to bring the mortgage current. Once the critical needs are met, the housing counselor will work with the homeowner to revise their budget.

Ask Homeowner to Set Aside Funds to Prevent Foreclosure – Once a realistic budget has been developed, the housing counselor will ask the homeowner to save the funds that have been set aside to pay arrearages on the mortgage loan. If the homeowner applies for and receives a HEMAP loan, then the homeowner may be required to make a cash contribution toward the mortgage delinquency at the time the HEMAP loan closes.

If the homeowner chooses not to retain his or her home, then the money set aside can be used to make other housing arrangements.

Get Exact Totals on Current Payments, Arrears, and Loan Balances – The housing counselor and homeowner will need information on debts, including current payments, arrears and loan balances, which can be obtained from the lender or the servicer to decide the best foreclosure mitigation solution. Servicers work on behalf of the lenders to collect payments from homeowners. In order for the housing counselor to get this payment information, the homeowner will need to sign an Authorization to Release Loan Information form.

Work with the Homeowner to Make Realistic Choices – The housing counselor will take into consideration all options available to the homeowner based on the type of loan (e.g., Fannie, Freddie, VA, FHA). The homeowner should ask questions until they fully understand all of their options.

Start Paperwork if the Homeowner Chooses to Try to Save House – The housing counselor provides the lender or servicer with the requisite income and expense documentation.

Request Delay of Foreclosure Sale Date – The housing counselor is an advocate for the homeowner in getting a delay on the foreclosure sale date. It is necessary for the homeowner to stay in contact with the lender and keep an eye on the sale process.

Determine Appropriate Options – Depending on the homeowner's goals and resources, and the available options for the specific loan type, the housing counselor helps the counselor make a final determination as to which workout plan should be submitted. In addition, the housing counselor will still go over options that do not require the lender's consent. For example, the homeowner may need to file bankruptcy to protect the home. Or, if the homeowner feels there has been an error in past due amount, he or she may decide to go to court. Also, the homeowner may decide to stay in the house until the last moment possible. The housing counselor will keep the homeowner updated as things progress. If the work-out option submitted to the lender or servicer is rejected, the housing counselor will update the homeowner and help them explore other options.

Funding for this program is provided by the Pennsylvania Housing Finance Agency and Neighborworks of America

MORTGAGE FORECLOSURE PREVENTION

When to Request Legal Assistance

Lack of Cooperation from Servicer/Lender

- a. Lender or Servicer is not willing to work with client and legal counsel is needed to negotiate with the Lender or Servicer for an affordable interest rate or repayment plan.
- b. Lender or Servicer is not providing the client and/or agency with requested information in a timely manner and/or reviewing servicer requirements.
- c. Lender or Servicer is not returning the client's or agency's telephone calls.
- d. Negotiating with Lender or Servicer requires specialized legal help.
- e. Loss mitigation efforts would benefit by assistance from legal counselor.
- f. Assistance is needed in determining who the "real" party of interest is.

Evidence of Abusive Servicing/Dispute over Amount of Arrears

- a. Excessive fees appear to have been charged.
- b. Foreclosure fees were added to the account before complaint filed (foreclosure fees appear in Act 6/91 Notice).
- c. Client made payments that were not credited properly by the servicer in the loan history.
- d. Advice or assistance to Housing Counselor is appropriate on the RESPA Letter/preparing qualified written request.

Assistance with Loan Modification

- a. Clarification is needed on short term or long term modification.
- b. Assistance is needed for full understanding of any "unclear" or questionable language in the agreement.

Pre-foreclosure/Short Sales

- a. Action is needed to negotiate with the Lender or Servicer to extend forbearance periods or postpone any foreclosure actions until the client is able to get the property listed with reputable real estate agent (preferably a member of **The Pennsylvania Association of REALTORS (PAR)**).
- b. Communication with the real estate agent will ensure that the property is being marketed in a timely manner.
- c. Advice on other options will be helpful when the default appears incurable.
- d. Assistance will help in addressing real estate issues that may be impeding sale of property, such as other liens or judgments that cloud title.

Executing a Deed-in-Lieu

- a. Review of documents advice regarding various issues, including tax implications, waiver of deficiency, forfeiture of escrow balance, etc. is needed
- b. The forfeit of any positive Escrow balance needs to be explained.
- c. Negotiation and assistance with lease agreements is required for homeowner to stay in property subsequent to sale pending agreed upon move out schedule.

***Assessment of Bankruptcy Options**

**While the legal counseling program will not allow for representation in the bankruptcy, a referral would still be appropriate to assess bankruptcy options and to prepare for filing bankruptcy. The legal counselor may be able to handle a bankruptcy case with different funding if a bankruptcy is deemed to be an appropriate option for the homeowner and if the homeowner is eligible for legal services through a different funding source.*

- a. This is a "must" referral if the counseling agency does not complete or handle bankruptcy counseling.
- b. Advice will include general analysis and advice about bankruptcy as an option, including explanation of costs associated with bankruptcy filing, judgments, bills and debts that may be renegotiated or removed through the bankruptcy process and property that could be at risk. Generally, the questions are whether the bankruptcy is likely to be the best option for a particular homeowner and whether the household is eligible to file bankruptcy?
- c. Advice will include any issues with the Trustee or bankruptcy attorneys.
- d. The homeowner needs to understand the costs associated bankruptcy filing and if the attorney costs are an issue for a client not eligible for legal services, the homeowner needs to learn about filing Pro Se (the term "pro se" refers to someone who represents him or herself in a legal procedure without the aid of an attorney). Also, the homeowner needs to understand the bankruptcy laws as they pertain to someone filing under this category.

All possible Predatory Lending Issues and Truth in Lending Act Issues

Following are actions needed to review for predatory lending and truth in lending issues:

1. Audit the mortgage documents to determine if mortgagor may have been a victim of a predatory loan or if the loan might be rescinded under the Truth in Lending Act;
2. Refer to TILA analysis if the loan was not used to make the initial purchase and if the loan is less than 3 years old;
3. Help determine if the homeowner is a victim of a foreclosure rescue or bankruptcy scam;
4. Assist with Nullifying Rescue Scams;
5. Review the HUD-1 and other mortgage financing documents;
6. Prepare rescission letters under TILA and HOEPA;
7. Prepare qualified written request for UDAP;
8. Prepare qualified written requests for RESPA;
9. Review applicability and protections afforded through laws and regulations governing fraud, fair housing and fair lending, banking and mortgage related entities.

Individual Legal advice or counseling regardless of the FMCI Level as it relates to the foreclosure process prior to the filing of a civil complaint in foreclosure by the lender

- a. The client will be assisted with responding to a Lender's Demand Letter (Act 6 Letter) "Intention to Foreclose Notice."
- b. Loan and/or any other Legal Documents will be interpreted.
- c. Case Files will be reviewed.

- d. Advice on Foreclosure Rights and options will be provided, along with an overview of what the process entails.

Estate Issues

- a. The homeowner will be assisted through appropriate clarification of documents and legal title issues if the occupant's name is not on the note, the mortgage or the deed.
- b. The occupant will be assisted, to understand their rights.
- c. The occupant will be assisted in expediting the processing of interstate succession issues or formal estate filings to clarify title and ownership as appropriate.
- d. Powers of attorney will be prepared, if necessary to facilitate authorization for transfer and legal representatives.

Miscellaneous Assistance and Advice (other than Litigation or Preparing for Litigation)

- a. The housing counselor will be helped to consider all options, including various refinancing programs listed elsewhere.
- b. Mediation procedures that are Non-Court related can be accessed, as long as they are NOT court ordered.
- c. Assistance is provided in reviewing and preparing assumptions and satisfactions of Mortgages--any amendments to the loan structure (e.g. Assignment of Mortgage, assistance in resolving tangled Titles).
- d. Assistance is provided with other credit issues and creditor actions affecting the homeowner that may directly impede resolution of the mortgage delinquency.
- e. Assistance and advice are offered regarding identity fraud issues.
- f. Advice is offered to resolve issues affecting absent members of the household.
- g. Other.

HEMAP (Homeowners' Emergency Mortgage Assistance Program) and other Homeowner Assistance Programs

- a. Assistance is offered for the HEMAP application process.
- b. Assistance is provided with other programs, such as: HOPE for Homeowners, HERO, Individualized Assistance for Local Mortgage assistance and rescue Programs, and Reverse mortgage programs
- c. Rescue financing/Refinance and Purchase Funding Programs are explored, including homeowner options for homeowners with interest rates over 11%.
- d. High Interest Rate options are explored.

Please note, while the PHFA legal counseling program doesn't allow for representation if the homeowner is already in foreclosure, a referral would still be appropriate. If the homeowner is income eligible, a legal aid attorney may be able to represent him or her through a different funding source.

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Federal/State HEMAP Programs



Comparison of the Federal Emergency Homeowners' Loan Program (EHLF) with Pennsylvania Homeowners' Emergency Mortgage Assistance Program (HEMAP)

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	HEMAP	EHLF
Property Type	<ul style="list-style-type: none"> Owner occupied single-family residence (1-2 units) 	<ul style="list-style-type: none"> Principal residence single-family residence (1-4 units or condo unit)
Hardship	<ul style="list-style-type: none"> beyond the mortgagor's control unemployment, under employment, health, family (divorce, death, domestic violence) and other causes 	<ul style="list-style-type: none"> Involuntarily unemployed or underemployed, because of adverse economic conditions loss of income due to medical condition
Income Limits	N/A	<= 120% of AMI; Current gross income must be at least 15% lower than it was on the date of unemployment or under employment or when medical condition caused loss in income
Delinquency	Delinquent at least sixty (60) days	delinquent at least 3 months
Likelihood of Resuming Payments	must have a reasonable likelihood of resuming payments within 24 months, (up to 36 months in periods of high unemployment)	Must have a reasonable likelihood of being able to resume repayment of the first mortgage obligations, and meet other housing expenses and debt obligations, when the assistance ends and/or borrower regains full employment, <u>as determined by criteria under the state program.</u>
Type of Assistance	No restriction on which mortgage is being paid, but cannot have more than 2 mortgages	Assistance provided to the eligible homeowner must be assistance directed at making payments on the first mortgage of the mortgaged property.
Length & Amount of Assistance	24 months (36 in periods of high unemployment); sixty thousand dollars (\$60,000)	12 months with a possible 12 month extension (24 months max); fifty thousand dollars (\$50,000)
Security	a mortgage lien on the property	loan secured by recorded HUD junior lien

	HEMAP	EHLP
Loan Terms		After the last payment for the homeowner, there will be a HUD note & mortgage with a five year declining balance, zero interest, nonrecourse loan. No payment is due on the note during the 5 year term so long as the assisted household maintains the property as principal residence and remains current in his or her monthly payments on the first mortgage loan. If the homeowner meets these two conditions, the balance due shall decline by twenty percent (20%) annually, until the note is extinguished and the junior loan is terminated.
Repayment	HEMAP loan recipients are required to pay up to 40 percent of their net monthly income (35% in periods of high unemployment), as determined by HEMAP, towards their total housing expense.	“substantially similar” state program must provide for repayment
Termination of Assistance	<ul style="list-style-type: none"> • failure to make required payments • violate any terms or conditions of the mortgage 	<ul style="list-style-type: none"> • The homeowner sells or no longer resides in the property • Refinances the property <u>and</u> draws cash from the refinance • Fails to make the portion of their current first lien mortgage loan payments for which they remain responsible.
Targeting	N/A	HUD will encourage targeting pockets in each state that has suffered the most from recent spikes in unemployment and/or mortgage delinquencies



Emergency Mortgage Assistance Program – Summary

Overview

The Dodd-Frank Wall Street Reform and Consumer Protection Act provided \$1 billion to HUD to implement the Emergency Homeowners Loan Program (EHLPP) Program. The program will offer a declining balance, deferred payment “bridge loan” (non-recourse, subordinate loan with zero interest) for up to \$50,000 to assist eligible homeowners with payments of arrearages, including delinquent taxes and insurance plus up to 24 months of monthly payments on their mortgage principal, interest, mortgage insurance premiums, taxes, and hazard insurance. HUD will assist borrowers in Puerto Rico and the 32 states otherwise not funded by Treasury’s Innovation Fund for Hardest Hit Housing Markets program, based on their relative unemployment measures. It is HUD’s intention for the program to begin taking applications from eligible homeowners by the end of the year.

Program Administration

There will be a dual delivery approach for program administration. The first approach will delegate some of the program administrative functions to designated third parties. The second approach will enable state housing finance agencies (HFAs) that operate substantially similar programs to engage in relief efforts on behalf of residents of their state.

- **Program Administration---Delegated approach:** HUD will delegate key program administration functions to separate external entities, while retaining program monitoring, compliance and long term note management functions internally (FHA and/or CPD). Delegations include:
 - Counseling Intermediary to Perform Intake, Eligibility Screening, and Outreach. HUD will enter into a cooperative agreement with NeighborWorks to have its network of housing counselors provide homeowner intake services.
 - Intake services shall include: (i) developing and disseminating program marketing materials, (ii) providing an overview of the program and eligibility requirements, (iii) conducting initial eligibility screening (including verifying income), (iv) counseling potential applicants, including providing information concerning available employment and training resources, (v) collecting and assembling homeowner documentation, (vi) submitting homeowner application, and (vii) providing transition counseling to explore with the

homeowner other loss mitigation options, including loan modification, short sales, deeds-in-lieu of foreclosure, or traditional sale of home.

- The counselors shall also be encouraged to conduct outreach to entities in local communities to provide information on assistance available to unemployed homeowners through this program and shall publicize the list of entities approved to assist potential applicants with applying to the program.,
- Fiscal Agent to perform funds control, payment distribution, and note processing functions. HUD will also to contract with an entity which has extensive loan servicing and funds control capabilities to provide general accounting and fiscal control services, including collecting payments from borrowers, distributing payments to servicers on a monthly basis, performing accounting, managing loan balances, and providing payoff information. The fiscal agent would also provide note processing function and services for the program such as recording liens, storing the note and handling the payoffs at the end of the program. Once the note/ mortgage is placed and the homeowner's final balance is determined, the loan servicing function will be transferred to HUD FHA for longer term management.
- **Program Administration -- Substantially similar state law approach:** State HFAs that operate loan assistance programs that are determined by HUD to be substantially similar to the EHRF program will receive allocations to fund emergency loans for borrowers in their states as well as payments to cover the administrative costs of performing the intake and housing counseling and fiscal agent functions (described above) directly or indirectly through subcontracts with third parties.

Allocation of Program Funds

- **Recipient Geography:** HUD will assist borrowers living in Puerto Rico and the 32 states otherwise not funded by Treasury's Innovation Fund for Hardest Hit Housing Markets program.
- **Allocation Amount:** An allocation amount will be reserved to assist homeowners living in each of these states. The total amount reserved will be based on the state's approximate share of unemployed homeowners with a mortgage relative to all unemployed homeowners with a mortgage (See attached allocation list).
- **Targeting Funds to Local Geographies:** HUD will provide information that identifies pockets within each of the designated states that have suffered the most from recent spikes in unemployment and/or mortgage delinquencies. HUD will encourage the use of program dollars in these hardest-hit areas.

Homeowner Eligibility and Program Operation

- **Income Thresholds:** Has a total pre-event household income equal to, or less than, 120 percent of the Area Median Income (AMI), which includes wage, salary, and self-employed earnings and income.
- **Significant Income Reduction:** Has a current gross income that is at least 15 percent lower than the pre-event income.¹
- **Employment type:** Both wage and salary workers and self-employed individuals are eligible.
- **Delinquency and Likelihood of Foreclosure:** Must be at least three months delinquent on payments and have received notification of an intention to foreclose. This requirement can be documented by any written communication from the mortgagee to the homeowner indicating at least three months of missed payments and the mortgagee's intent to foreclose. In addition, the homeowner can self-certify that there is a likelihood of initiation of foreclosure on the part of their mortgagee due to the homeowner being at least three months delinquent in their monthly payment.
- **Ability to Resume Repayment:** Has a reasonable likelihood of being able to resume repayment of the first mortgage obligations within 2 years, and meet other housing expenses and debt obligations when the household regains full employment, as determined by:
 - The homeowner must have a back-end ratio or DTI below 55% (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total gross monthly income). For this calculation, gross income will be measured at the pre-event level.
- **Principal Residence:** Must reside in the mortgaged property as principal residence. The mortgaged property must also be a single family residence (1 to 4 unit structure or condominium unit).

Creation of HUD Note: After the first assistance payment is made on behalf of the homeowner, the fiscal agent will create an open-ended "HUD note" and a mortgage to be in the name of the Secretary HUD of sufficient size to accommodate the expected amount of assistance to be provided to homeowner.

Ongoing Qualification of Homeowner

- **Termination of Monthly Assistance:** Assistance is terminated and the homeowner resumes full responsibility for meeting the first lien mortgage payments in the event of any of the following circumstances:

¹ "Pre-event income" is defined as the income prior to the onset of unemployment, underemployment, or medical emergency, while "current income" is the income at the time of program application, as well as income during the period that the homeowner continues to receive assistance from the fund.

- The maximum loan (\$50,000) amount has been reached;
 - The homeowner fails to report changes in unemployment status or income;
 - The homeowner's income regains 85% or more of its pre-event level;
 - The homeowner no longer resides in, sells, or refinances the debt on the mortgaged property; or
 - The homeowner defaults on their portion of the current first lien mortgage loan payments.
- **Income re-evaluation:** After initial income verification at application intake, the homeowner shall be required to notify the fiscal agent of any changes in the household income and/or employment status at any point throughout the entire period of assistance.

Forms of Assistance

- **Use of Funds for Arrearages:** On behalf of the homeowner, the fiscal agent shall use loan funds to pay 100% of arrearages (mortgage principal, interest, mortgage insurance premiums, taxes, hazard insurance, and ground rent, if any).
- **Homeowner Payments:** Homeowner contribution to monthly payment on first mortgage will be set at 31 percent of gross income at the time of application, but in no instance will it be less than \$25 per month.
- **Use of Funds for Continuing Mortgage Assistance:** The fiscal agent will make monthly mortgage payments to the servicer of the first lien mortgage in excess of the payments made by the homeowner.
- **Duration of Assistance:** If at any time the household's gross income increases to 85% or more of its pre-event level, assistance will be phased out by the fiscal agent over a two month period. In any event, assistance with monthly payments may not continue beyond 24 months.

Repayment Terms

- **Transition Counseling:** The designated counseling agent shall contact each homeowner that is approaching the last months of program eligibility and remains un/underemployed (3-6 months before the assistance ends) and require the homeowner to meet with a HUD approved counseling agent to explore other loss mitigation options, including loan modification, short sales, deeds-in-lieu of foreclosure, or traditional sale of home.
- **Repayment of HUD Note:** Following the last payment on behalf of the homeowner, the fiscal agent will process the homeowner's "HUD Note" and record a mortgage with a specific loan balance. The note and mortgage will be in the form of a five year declining balance, zero interest, nonrecourse loan, and the mortgage shall be in the form of a secured junior lien on the property.

- **Terms for Declining Balance Feature:** No payment is due on the note during the 5 year term so long as the assisted household maintains the property as principal residence and remains current in his or her monthly payments on the first mortgage loan. If the homeowner meets these two conditions, the balance due shall decline by twenty percent (20%) annually, until the note is extinguished and the junior loan is terminated.

- **Events Triggering Note Repayment:** The homeowner will be responsible for repayment of the applicable balance of the HUD note to the fiscal agent or its successor, if, at any time during the five year repayment period, any of the following events occur:
 - The homeowner no longer resides in the mortgaged property as a principal residence, but maintains ownership;
 - The homeowner defaults on its portion of the current mortgage; or
 - The homeowner receives net proceeds from selling or refinancing debt on the home. Net proceeds -- after paying outstanding applicable brokers fees, first balances (and second lien balances, as applicable), and an allowance of \$2,000 to the homeowner for relocation expenses when the home is sold -- will go towards paying down the HUD note. In the event that proceeds of a sale or loan refinance are not sufficient to repay the entire HUD note, the remaining applicable balance of the HUD note shall be considered to have been met, and the lien against the property shall be released.

- **Provisions for Underwater Homeowners:** At all stages of the program, “underwater” homeowners² will be encouraged to explore participation in short sale or short refinancing programs offered by their servicer and/or the federal government (*i.e.* Home Affordable Foreclosure Alternatives)³, which will not trigger repayment of the HUD note.

² Underwater homeowners are those with mortgage debt in excess of the market value of their home

³ Making Home Affordable.gov: <http://makinghomeaffordable.gov/hafa.html>

HUD'S EMERGENCY HOME LOAN PROGRAM

FOR PHFA USE ONLY

The Pennsylvania Housing Finance Agency (PHFA) will use this application, and other financial information to help determine if, and to what extent, you are eligible for an assistance loan. This effort is designed to help you avoid mortgage foreclosure.
PHFA may use your social security number to obtain a credit report. IF YOU SUBMIT THIS INFORMATION WITHOUT PROVIDING ALL REQUESTED INFORMATION, PHFA MAY NOT BE ABLE TO HELP YOU.

Reason For Mortgage Delinquency: _____ Unemployment _____ Underemployment _____ Medical

Applicant		Social Security #			Dwelling:	Single (S)
Residence Address		City	County	State	Zip	Double (D) <input type="checkbox"/> Row (R) <input type="checkbox"/>
						Condo (C) <input type="checkbox"/>
						Mobile/Trailer (T) <input type="checkbox"/>
						Multiple Units (M) <input type="checkbox"/>
		(if multiple, please explain)				

Mortgaged Property Address (if different from above)

Explain if address is different:

Co-Applicant	Relationship	Social Security #			FOR PHFA USE ONLY
Address	City	County	State	Zip	
Co-Applicant	Relationship	Social Security #			
Address	City	County	State	Zip	

How long have you been a resident of Pennsylvania? _____ years	How Long have you lived in the mortgaged property? _____ yrs.	Do you currently live in the mortgaged property? YES <input type="checkbox"/> NO <input type="checkbox"/>	Is this your primary residence? <input type="checkbox"/> YES <input type="checkbox"/> NO
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Do you own subject property? YES _____ NO _____ Are all owners a part of application & willing to sign loan documents if approved? _____ YES _____ NO

If no, explain, _____

Mortgage Holder	Address (indicate if subject)	Loan Number	Loan Amount	Term
1.				
2.				
3.				

Monthly Payment	Date of Last Full Payment	Last Pmt. Applied to Month/Year	Total Amount Delinquent
1.			
2.			
3.			
Total \$			Total \$

Marital Status: _____ Married (M) _____ Separated (S) _____ Unmarried(U) _____ Divorced (D) _____ Widow/Widower (W)

Number of Dependents: _____ Ages

Do you _____ pay or _____ receive Alimony, child support, or separate maintenance? Yes _____ No _____ Amount per month?

List employment data for all persons whose income(s) is used to meet household expenses: (attach separate sheet if necessary.) Send VOE forms..

Applicant/ Co-Applicant Name	Current and Previous Employers & Addresses for last 5 years	Dates of Employment	Position	Reason for Leaving	Gross Pay Per Month	Net/Month <small>Gross minus taxes</small>

List all other sources of "Income" such as social security, pensions, unemployment/workers compensation, cash assistance, children, boarder, child support, alimony, etc.

Name/Source	Amount/Month	Description	Start Date	Name/Source	Amount/Month	Description	Start Date

ATTENTION COUNSELORS: SPECIAL COMMENTS. (Fill this section in in RED if sheriff's sale is scheduled. Include date of sale, explain any reason the application should be rushed. If this is a summary application, please note why it is a summary.

LIST DOLLAR VALUE FOR ALL ASSETS		LIST ALL LIABILITIES (Include "Revolving" Charge Accounts)		
Cash or Money Orders		Installment Debts/Charge Accts.	Normal Monthly Payment	Unpaid Balance
Checking Accounts-Bank Name & Account#				
Savings Accounts-Bank Name & Account #				
Stocks & Bonds/Savings Bonds (Net Cash Value)				
		Other Debts - Medical/Dental		
		IRS		
		Legal		
		Educational		
		Personal Loans		
Real Estate (Market Value) of Home in Foreclosure		Real Estate Loans		
Other Real Estate Address Value				
Vested Interest in Retirement Fund (Type/Value)		Real Estate Loans - other property		
		Automobile Loans		
Automobiles (Makes & Years)				
		Payroll Deductions/Loans		
Other Assets (Itemize)				
		Alimony/Child Support/Other		
		Per Capita/Personal Prop. Taxes		
TOTAL ASSETS	\$ -	TOTAL LIABILITIES	\$ -	\$ -
MONTHLY HOUSING EXPENSES:		LIVING EXPENSES:		
1st Mortgage Payment Amount		Groceries/Lunches		Day Care
2nd Mortgage Payment Amount		Toiletries/Paper Goods		Gifts/Entertainment
3rd Mortgage Payment Amount		Tobacco Products		Pet Care
4th Mortgage Payment Amount		Alcoholic Beverages		Child Support/Alimony
Real Estate Taxes (List only if not escrowed)		Clothing		Magazines/Newspaper
Hazard Insurance (List only if not escrowed)		Dry Cleaning		Church
Credit Life Insurance (List only if not escrowed)		Cable TV		Tuition
Other (Condo Fees/Association Dues)		Telephone/Cell Phone		Auto Insurance
Utilities (Electric, gas, oil, water, sewer, trash)		Internet Fees		Life Insurance
(use "normal" monthly payments)		Gasoline		Medical Insurance
		Bus		Dental Insurance
				Home Repairs
TOTAL HOUSING EXPENSES	\$ -	TOTAL MONTHLY LIVING EXPENSES:		\$ -
<p>Attach a separate page explaining the circumstances that caused your mortgage delinquency and you will be able to resume full mortgage payments. Be sure to include documentation/verification of ALL circumstances leading to the delinquency.</p> <p style="text-align: center;">INFORMATION FOR GOVERNMENT MONITORING PURPOSES</p> <p>The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender 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, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must receive the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)</p>				
BORROWER: <input type="checkbox"/> I do not wish to furnish this information. Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Black or African American Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male		CO_BORROWER: <input type="checkbox"/> I do not wish to furnish this information. Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Black or African American Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male		
<p>AGREEMENT: The undersigned is applying for an assistance loan to be secured by a mortgage or deed of trust on the property described herein, and represents that the property will not be used for any illegal or restricted purpose and that all statements made in this application are true and are made for the purpose of obtaining a loan. Verification may be obtained from any source named in this application. The undersigned hereby consents to the acquisition of all pertinent data necessary by the Pennsylvania Housing Finance Agency in order to evaluate eligibility, including, but not limited to, personal State Income Tax returns.</p> <p>MISREPRESENTATION: I/we fully understand that any intentional misrepresentation of any financial information in conjunction with the filing of this application will result in the assistance loan being denied or immediate repayment required for all loan disbursements made as a result of such misrepresentation and the Mortgagees may at any time thereafter take any legal action to enforce the Mortgage without any further restriction.</p>				
Applicant's Signature _____ Date _____ <div style="text-align: right;">Hours can be reached: _____</div>		Co-Applicant's Signature _____ Date _____ <div style="text-align: right;">Hours can be reached: _____</div>		
Home Phone _____ Work Phone _____ Cell Phone _____ E-Mail Address(if applicable) _____		Home Phone _____ Work Phone _____ Cell Phone _____ E-Mail Address(if applicable) _____		
Counseling Agency Name _____ Agency Code _____ Phone Number _____		Counselor Name (please print): _____ Counselor Signature: _____		

EHLP APPLICATION CIRCUMSTANCES ANALYSIS FORM

Counselor's: If you were unable to reach a Foreclosure Agreement or Payment Workout Plan between the Homeowner and Lender, complete the information below and obtain the Homeowner(s) signature.

Homeowner: _____

SS #: _____

Co-Homeowner: _____

SS #: _____

Date: _____

Counselor Signature: _____

1. What specifically caused the mortgage delinquency and identify to whom the circumstances apply? (i.e. layoff, marital separation, medical expense, etc.)

Provide verification of circumstances.

2. When did the circumstances occur? (specific dates)

3. When did the mortgage delinquency occur? (specific dates)

4. Did the time frame of homeowner's financial circumstances relate directly to the date of delinquency? If not, re-review specific circumstances that more closely coincide with the delinquency date and provide a brief statement.

CIRCUMSTANCES ANALYSIS FORM cont.

5. If applicable, please document any medical expenses that may have contributed to the mortgage delinquency.

Type:	Amount:	Date paid:
	\$ -	
	\$ -	
	\$ -	

6. Did the homeowner receive unemployment comp., workmen's comp., child support, a lump sum award, or any other type of income as a result of the circumstances? If yes, specify the type, amount, and beginning and ending dates of such assistance. **Provide documentation!**

Type:	Amount:	Beginning Date:	Ending Date:
	\$ -		
	\$ -		
	\$ -		

7. What are the homeowner's doing to improve their situation to allow for resumption of mortgage payments within a maximum of 24/36 months? (i.e. answering unemployment ads, training, schooling, budget counseling, etc.) **Be specific!! Provide documentation.**

8. Does the homeowner have any savings to apply towards the mortgage delinquency?

If yes, how much?

Homeowner Signature

Date

Co-homeowner Signature

Date

Note: Please attach this form to Homeowner's Letter of Circumstances and supporting documentation.

AUTHORIZATION FOR RELEASE OF INFORMATION

I am applying to the Pennsylvania Housing Finance Agency ("PHFA") for a loan through HUD'S EHLP Program. I understand that PHFA, its employees and agents, and/or the below named PHFA Approved Counseling Agency ("Counseling Agency") will be checking my credit history, mortgage payment history, mortgage information, mortgage delinquency information, employment history and other personal and financial information in order for PHFA to determine my eligibility for an EHLP Loan.

I hereby authorize PHFA and/or the below named Counseling Agency to check my credit history, mortgage payment history, mortgage information, mortgage delinquency information, employment records, and other personal and financial information. This shall include my Federal and State tax returns for the previous three years.

I hereby authorize my mortgage lender(s), mortgage servicer(s), employer(s), or any other private company, for-profit or non-profit organization and government agency or any other person or entity to discuss and disclose such information to PHFA and/or the below named Counseling Agency.

I authorize the release of the above-mentioned information by any means possible, including but not limited to phone discussions, mail, facsimile, e-mail or any other electronic means. Information in writing should be sent to the Pennsylvania Housing Finance Agency, P.O. Box 15530, Harrisburg, PA 17105-5530.

I understand that this authorization will be used in connection with my loan application and, if the loan is approved, will continue thereafter until the debt is paid in full.

Applicant Signature

Print Name

Date

Applicant Signature

Print Name

Date

Witness

Date

Counselor's Name

PHFA Approved Counseling Agency

**PENNSYLVANIA HOUSING FINANCE AGENCY
HUD'S EHLP PROGRAM**

**POLICY REGARDING THE CONFIDENTIALITY
OF CUSTOMER INFORMATION**

Introduction

In the course of providing affordable housing and loan products throughout the Commonwealth, the Pennsylvania Housing Finance Agency (PHFA) obtains personal information of both a financial and non-financial nature from its customers. This information is maintained on our computer systems and is used by PHFA employees to service loans and to perform other job-related duties.

At PHFA, protecting your privacy is important to us. Although the law may not require us to do so, we want to provide you with a statement regarding how we treat information received from our customers. We wish to assure that information about you is used professionally in the normal course of PHFA business and that we do not disclose confidential information about you to unauthorized parties. If you have specific comments or questions regarding PHFA's privacy policy, please contact us.

Use of Confidential Information

Unauthorized disclosure of customer information is considered a serious matter, even if done inadvertently. PHFA employees are instructed to use customer information only for legitimate business purposes and to not discuss customer information among themselves unnecessarily. Employees should never discuss customer information or business matters outside the office. PHFA employees having access to customers' Social Security numbers, addresses, telephone numbers and any other personal information may not use that information to contact the customer for any reason other than the business of PHFA. Breaching customer confidentiality is taken very seriously by PHFA and may result in employee discipline including dismissal.

Disclosing Customer Personal Financial and Non-Financial Information

Customer personal financial information including, but not limited to, tax returns, income and expense information, loan account balances, payroll information, assets and liabilities may be released only to the customer, any applicable joint homeowner, co-maker or co-signer or persons who are authorized in writing to receive such information. Likewise, customer's personal non-financial information including, but not limited to, home and business addresses, telephone numbers and fax machine numbers may be released only to the customer, any applicable joint homeowner, co-maker or co-signer or persons who are authorized in writing to receive such information.

Release of any customer information (whether financial or non-financial) to anyone other than these parties is strictly prohibited, unless PHFA is obligated to provide such information by contract, law or regulation (e.g. credit reporting agencies, consumer dispute resolution agencies, subpoenas, federal or state investigative entities or as otherwise required by federal, state or local laws, regulations or reporting requirements) or unless such disclosures are necessary or appropriate for PHFA to service your account and conduct business.

For instance, some customer information must be disclosed to secondary mortgage entities such as Fannie Mae, to federal or private mortgage insurance or guarantee programs, to local taxing bodies or to judicial authorities. Likewise, we may from time to time disclose customer information to businesses that help us process or service your transactions or accounts (including businesses that print and mail your invoices and account statements), and we may disclose customer information to businesses, such as financial or educational institutions or marketing firms to assist us in evaluating our programs and in marketing our loan programs or related loan products. Any private vendors, suppliers or businesses will be restricted in their use of customer information to the performance of the specific service we have requested and will be contractually obligated to maintain strict confidentiality.

PHFA does not sell information about you to anyone.

Homeowner Signature

Date

Homeowner Signature

Date

CONFIRMATION - EHLF APPLICATION

DATE: _____

TO: _____

From: _____

This is to confirm your appointment in our office on _____, at _____ to complete your application for HUD's Emergency Home Loan Program. It is important that you keep this appointment so that your application can be filed within the required time period.

In order to expedite the completion of your application at the interview, please bring the following information to your meeting:

- 1) **LETTER OF CIRCUMSTANCES** - Please print or type and sign a detailed letter explaining the reasons for your current mortgage delinquency. Be as specific as possible, since this letter is very important in determining your eligibility for loan assistance.
- 2) **EVIDENCE or DOCUMENTED PROOF of CIRCUMSTANCES such as medical bills or proof of Layoff.**
that contributed to the mortgage delinquency.
- 3) **CURRENT MORTGAGE BILLING STATEMENT** and any other Notices of Foreclosure.
(Complaint, Sheriff's Sale Notice)
- 4) **PAY STUBS** - Three most recent consecutive stubs for all working household members.
- 5) **VERIFICATION OF OTHER INCOME** - (unemployment comp., workers' comp., child support, alimony, Public Assistance, social security, rent, pensions, etc.).
- 6) **EMPLOYMENT HISTORY** - names, addresses, position title and work dates of all employers where you have worked for over the past five years.
- 7) **FEDERAL INCOME TAX RETURNS** for the past 3 years (transcripts can be obtained by calling the IRS at 1-(800) 829-1040 and ask for Form 4506).
- 8) **DEED TO PROPERTY** (this can be obtained from your County Courthouse).
- 9) **MONTHLY STATEMENTS** of all loans and charge accounts (account numbers & balances).
- 10) **Proof of REAL ESTATE TAXES** (if not escrowed by mortgagee). Copies of tax bills can be obtained from your county and township government offices.)
- 11) **HOMEOWNER'S INSURANCE POLICY**-(can be obtained from Insurance Agent).
- 12) **CHECKING & SAVINGS ACCOUNT STATEMENTS.** verifying current balances.
- 13) **VERIFICATION of stocks, bonds, retirement accounts, IRA's, 401-K's, cash value of life insurance policies, etc.**
- 14) **SOCIAL SECURITY NUMBERS** for all applicants and mortgagors.
- 15) **IDENTIFICATION** (copy of Driver's License or other Photo ID)

Tenant Issues When a Property is Foreclosed Upon



**Protecting Tenants at Foreclosure Act:
Title VII, P.L. 111-22, effective May 20, 2009
and § 1484, P.L. 111-203, effective July 21, 2010**

David Rammler
National Housing Law Project
December 8, 2010
drammler@nhlp.org
(202) 347-8775

- NLIHC estimates that 40% of those losing their homes in foreclosures are renters.
 - *Renters in Foreclosure: Defining the Problem, Identifying Solutions*, January 2009, <https://www2398.ssldomain.com/nlihc/doc/renters-in-foreclosure.pdf>
- Renters had few, if any, rights and in most states could be summarily evicted
 - *Without Just Cause* (2/09), http://nlchp.org/content/pubs/Without_Just_Cause1.pdf

PTFA

- Successor-in-interest takes subject to lease that exists when successor takes complete title
- Applies to all residential properties which suffer foreclosure
- Protects tenants from summary eviction and protects expectation interests
- More than 90 days left on lease:
 - Have a right to stay until end of lease, and
 - Entitled to 90 days' notice to vacate before the new owner can file an eviction action
 - EXCEPTION: Lease may be terminated on 90 days' notice by a purchaser who will occupy the unit as his or her primary residence
- Less than 90 days left on lease:
 - Entitled to 90 days' notice to vacate
 - Includes verbal/oral/month to month leases
- Must be Bona Fide Tenant: does not apply if tenant
 - is the mortgagor or the mortgagor's child, spouse, or parent
 - is paying substantially below FMR without subsidy
 - Lease was not an 'arms-length' transaction
 -
- Section 8 housing choice voucher holders
 - have benefit of general protections (section 702) and special protections provided specifically in section 703
 - New owner is subject to the tenant's Section 8 lease
 - New owner is subject to the Section 8 Housing Assistance Payment (HAP) contract with the housing authority
 - No BFT test
- All rights and obligations of leases survive transfer of title.
- Does not affect state or local laws that offer additional protections for tenants
- Expires December 31, 2014

National Housing Laws Project, nhlp.org,
National Low Income Housing Coalition, nlihc.org,
National Law Center on Homelessness and Poverty, nlchp.org

TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT

**Clarified and extended by, H. R. 4173, H. R. 4173—829 sent to the President for signature July 15, 2010
and signed by the President on July 21, 2010**

SEC. 701. SHORT TITLE.

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, ~~as of the date of such notice of foreclosure--~~

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, 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). **For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.**

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended--

(1) by inserting before the semicolon in subparagraph (C) the following: 'and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.'; and

(2) by inserting at the end of subparagraph (F) the following: 'In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.'

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, ~~2012~~ 2014.

RESEARCH AND SUPPORT MATERIALS FOR PTFA:

PTFA Statute: ¹ Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, div. A, tit. VII, §§701-704, 123 Stat. 1632, 1660-62 (May 20, 2009), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ022.111.pdf

Clarification & Amendment of PTFA: ¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, tit. XIV, § 1484, 124 Stat. 1376, 2204 (July 21, 2010), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf. (hereinafter, as clarified and extended “PTFA”). Note that there is no official clarified and extended codification of the PTFA. An unofficial current text, constructed by merging Pub. L. No. 111-22 and 111-203 is available on the websites of the NHLP, NLIHC and NLCHP (see note 13).

Background materials: ¹ See the excellent research and studies conducted by the National Low Income Housing Coalition at: Renters in Foreclosure: NLIHC Research and Publications, <http://www.nlihc.org/template/page.cfm?id=195>, and the National Law Center on Homelessness and Poverty, Housing :: http://www.nlchp.org/program_reportspubs.cfm?startRow=1&FA=5&TAB=0&prog=5.

Jurisdictions with For Cause eviction law: ¹ New Jersey, Washington, D.C. and recently Massachusetts.

Study on Tenants in Foreclosure: ¹ NLIHC, Recognizing Renters in the Foreclosure Crisis, Changes and Opportunities, <http://www.nlihc.org/doc/NLIHC-Renters-in-Foreclosure-UCLA-5-2009.pdf>.

Bona Fide Tenant: ¹ Under § 702 of the Act, a lease or tenancy shall be considered bona fide only if (1) the mortgagor or the child, spouse, or parent of the mortgagor ... is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent ... or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

Regulations for HAPs: ¹ 24 C.F.R. § 982.451-456, <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=8dedeaab16328443e225be387f32d616&rgn=div5&view=text&node=24:4.0.3.1.22&idno=24#24:4.0.3.1.22.10>.

No BFT requirement for HCV: ¹ Section 703 of the PTFA. Note that §703 does not restrict coverage to ‘bona fide’ tenants but covers all §8 voucher participants.

Termination of HCV lease: ¹ 42 U.S.C. 1437f (o)(7), <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=re35rd/0/2/0&WAISaction=retrieve>.

HUD Guidance: ¹ Protecting Tenants at Foreclosure Act – Guidance on New Tenant Protections, Notice PIH 2009 - 52 (HA) (December 15, 2009), <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-52.pdf>.

Fed Regulatory Notices: ¹ The resulting bulletins, letters and notices are available at the websites for the Office of the Comptroller of the Currency (Helping Families Save Their Homes Act of 2009 — Title VII Tenant Protections, Guidance, OCC Bulletin 2009-28 (August 13, 2009), <http://www.occ.gov/ftp/bulletin/2009-28.html> and Protecting Tenants at Foreclosure Act of 2009, New Examination Procedures, OCC Bulletin 2010-2 (January 8, 2010), <http://www.occ.gov/ftp/bulletin/2010-2.html>, the Office of Thrift Supervision, Tenant Protection during Foreclosure “Helping Families Save Their Homes Act of 2009”, September 2, 2009, <http://files.ots.treas.gov/25319.pdf>, the Federal Deposit Insurance Corporation, Protecting Tenants at Foreclosure Act Public Law, Financial Institution Letter, FIL-56-2009 (September 28, 2009), <http://www.fdic.gov/news/news/financial/2009/fil09056.html>, the Federal Reserve, Information and Examination Procedures for the “Protecting Tenants at Foreclosure Act of 2009”, Consumer Affairs Letter, CA 09-5 (July 30, 2009), <http://www.federalreserve.gov/boarddocs/caletters/2009/0905/caltr0905.htm>, and the National Credit Union Administration, Protecting Tenants at Foreclosure Act Public Law of 2009, Regulatory Alert, NO: 09-RA-08 (August 2009), <http://www.ncua.gov/Resources/RegulatoryAlerts/Files/2009/09-RA-08.pdf>.

Sources for info: ¹ National Law Center for Homelessness and Poverty (NLCHP.org), National Housing Law Project (NHLP.org), and the National Low Income Housing Coalition (NLIHC.org).

Advocate Working Group: ¹ Attorneys and advocates are invited to join the PTFA Working Group of the national Housing Justice Network which meets by conference call on the first Monday of each month. To join HJN and participate in the working group, see the NHLP website under Housing Justice Network/Join: <http://www.nhlp.org/join>, or call the NHLP Oakland office.

State & Local Laws: ¹ NHLP has catalogued these laws at <http://nhlp.org/node/1341>, and NLCHP and NLIHC have put together an extensive resource packet outlining foreclosure procedures and related laws. See: NLCHP and NLIHC, Without Just Cause: A 50-State Review of the (Lack o) Rights of Tenants in Foreclosure (February, 2009), http://nlchp.org/content/pubs/Without_Just_Cause1.pdf; NLCHP, Staying Home: The Rights of Renters Living in Foreclosed Properties (June 2010), http://www.nlchp.org/content/pubs/Staying%20Home_FINAL%207-29-10%20%28Utah%20Link%20changed%29.pdf; Resource Center, [The Foreclosure Crisis and Its Impact on Tenants](http://nhlp.org/resourcecenter?tid=68), <http://nhlp.org/resourcecenter?tid=68>.

HUD/FHA Occupied Conveyance Policy Notices: NATIONAL HOUSING LAW PROJECT, NOV. 2010

The Federal Housing Administration (FHA), a division of the Department of Housing and Urban Development (HUD), insures mortgages issued by their approved lenders (mortgagees) on one-to-four unit residential (known as 'single-family') properties. In the event of a foreclosure, a mortgagee may try to collect on the mortgage's insurance by conveying the property to the FHA. In order to do so, the mortgagee must comply with HUD's policy that, except in a limited set of circumstances, all single-family properties conveyed to HUD must be vacant. The mortgagee is required to send notification of this policy to the head of every occupant household. This notice misleads occupants as to their rights as tenants in foreclosed properties secured by the Protecting Tenants in Foreclosure Act of 2009 (PTFA). <http://nhlp.org/files/Public%20Law%20111-22%20title%20VII%20as%20amended1%20final.pdf>.

This notice, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4330.1/43301x40HSGH.pdf>, must be sent to the head of each occupant household 60-90 days before the mortgagee believes it will acquire title to the property. This Notice must use the exact wording of set out in: Appendix 1, HUD Property Disposition Handbook - One to Four Family (4310.5), Rev-2, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4310.5/index.cfm> and Appendix 40, HUD Administration of Insured Home Mortgages Handbook (4330.1), <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4330.1/index.cfm>.

The notice informs the occupant that the mortgagee will likely gain title within that time period, that the mortgagee will then probably transfer title to HUD shortly thereafter, that the property must generally be vacant when transferred to HUD, and that in order for the tenant to remain an occupant of the property, the tenant must file an application within 20 days of receiving this notice and meet HUD's conditions for continued occupancy. The notice indicates that tenants who are not approved by HUD will have to vacate the property immediately after the mortgagee acquires title.

First, continued occupancy in the property under the PTFA cannot be conditioned on HUD's approval.

Second, the notice makes no mention of any other tenant rights, whether under PTFA or state or local law, thereby implying to tenants that this is their only option.

Note, that at the time the mortgagee sends the FHA notice, it is only a potential successor in interest and cannot send a valid PTFA notice to vacate until it has acquired complete title to the property.

The policy encourages mortgagees to try to get around the PTFA since, in most cases, they will not be able to receive the insurance money until the property is empty.

The National Housing Law Project, The National Low Income Housing Coalition and The National Law Center on Homelessness and Poverty have tried to work with FHA and executives at HUD to change HUD's notice so that it accurately informs tenants of their rights pursuant to the PTFA, but HUD has made no effective changes to the notice. Even if the HUD notification eventually complies with the PTFA, that is no guarantee that mortgagees will know about or comply with the PTFA.

See: Federal Register /Vol. 75, No. 208 /Thursday, October 28, 2010 /Notices 66385

Protecting Tenants at Foreclosure Act:

Guidance on Notification Responsibilities Under the Act With respect to Occupied Conveyance

<http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=73UevY/0/2/0&WAISection=retrieve>