PHILADELPHIA RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM

Mortgage Foreclosure Negotiation Training Manual for Pro Bono Counsel

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12:00 – 2:15 PM

With many thanks to our host

Fox Rothschild LLP
Trainers

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Philadelphia VIP

**Overview**

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

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

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

**Ways to Volunteer with VIP’s Mortgage Foreclosure Negotiation Program**

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

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

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

- Volunteers receive 2 free CLE credits for (1) representing one client as an Ongoing Volunteer, or (2) serving as a Day-of or On-call/Emergency volunteer on three separate occasions.

- Ongoing representation is highly preferred – It results in a much higher likelihood that the client will save her home. It also allows VIP staff to find only one volunteer attorney for every case.

- Per Rule 6.5 of the PA Rules of Professional Responsibility, a volunteer need not obtain conflict waivers when acting as a day-of or on-call/emergency volunteer. However, to continue representation after providing day-of or on-call/emergency representation, a volunteer must conduct a conflicts check.
Substance of a Foreclosure Case

**Relevant Statutes**

### Civil Procedure

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

### Act 91

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

### Act 6

Act 6 governs mortgage foreclosure procedure in Pennsylvania. An “Act 6 Notice” is a Notice of Intent to Foreclose.
THE FORECLOSURE PROCESS IN PENNSYLVANIA

- Foreclosure in Pennsylvania is a judicial process – the lender must commence an action in court in order to foreclose on and sell the property.

- The homeowner receives an Act 91 / Act 6 notice before the complaint is filed, a 10-day notice of intention to take a default judgment before judgment is entered, and a notice that a sheriff’s sale will occur before the sale.

BASIC VOCABULARY

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

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

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

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

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

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

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

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

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

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

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

Introduction

Joint General Court Reg. No. 2008-1

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

Program Description

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

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

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

Gray boxes indicate steps requiring a lawyer’s intervention.
HOW THE DIVERSION PROCESS (IDEALLY) WORKS

Notifying Homeowners

STEP 1: The plaintiff files a complaint.

STEP 2: The complaint is served on the homeowner. Service includes a letter from the Court of Common Pleas listing a conciliation conference date and the phone number for the Save Your Home Philly hotline (215-334-HOME).

STEP 3: The homeowner calls the hotline and receives a referral to a housing counseling agency.

Alternatively, the homeowner calls a housing counseling agency as a result of outreach by the Office of Housing and Community Development or referral by a lender.

STEP 4: The housing counselor submits a loan work-out proposal to the plaintiff’s counsel at least 10 days before the conciliation conference.

STEP 5: If a financial proposal was submitted prior to the conference, the lender’s attorney, the housing counselor, and the homeowner will discuss foreclosure alternatives at the conciliation conference.

Alternatively, if a financial proposal was not submitted in time or at all but the homeowner appears at the conciliation conference, the court will automatically schedule a second conciliation conference approximately 35 days hence. The financial proposal must be submitted no later than 14 days prior to the second conciliation conference so that foreclosure alternatives can be discussed at the second conference.

Housing Counseling

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

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

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

VIP Eligibility Requirements

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

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

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

Initial Tasks for Volunteer Attorneys

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

See Appendix for court-recommended list.

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

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

- **VIP Referral Packet:**
  When you volunteer to take a case for ongoing representation, VIP will send you a referral packet. This will include copies of all relevant case documents, including:
  - Deed
  - Mortgage and any assignments
  - Property tax information and tax balances
  - Civil docket as of the date of referral
  - A copy of the referral letter sent to the client
  - Client intake form
  - VIP Representation Agreement
  - VIP Mortgage Foreclosure Resources Reference Sheet

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

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

- **Documents Lender’s Counsel Can Provide:**
  You will need to formally request these documents. Once you have authorization from your client, the lender should be able to provide the following documents:
  - The complaint
  - A title report (possibly)
  - An itemized list of arrearages, fees and costs, reinstatement amount and pay-off amount
  - A payment history. The client should request this document directly from the lender if lender’s counsel does not have a copy.
  - The documents the homeowner submitted to lender’s counsel as part of the financial packet.
Case Analysis

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

- **Why did client become delinquent on the loan?**
  If the problem is or can be resolved, the client might have a better chance of reaching an agreement with the lender or servicer. If the problem is chronic or difficult to resolve, the client might want to carefully consider alternate means to avoid foreclosure, such as offering a deed in lieu of foreclosure or requesting permission to put the home up for short sale.

- **How much is owed in arrears?**
  The amount in arrears will determine the work-out option your client can afford. Can the client pay the arrears in a lump sum? Over a five-year bankruptcy period? Should the arrears be capitalized and paid over the life of the loan? In a breakdown of the arrears, does any amount seem unreasonable (e.g., excessive attorney’s fees) or disputable (e.g., multiple appraisals)?

- **How often has client come back for a conference? Why?**
  If a homeowner has negotiated one or more unsuccessful arrangements with the plaintiff over a longer period of time, it might be difficult to settle on a mutually acceptable plan. On the other hand, if the homeowner has returned for a conference multiple times because of servicer errors or delay, the number of conferences might have no effect on negotiating an outcome.

- **Has the client been setting aside funds for mortgage payments? If not, why not?**
  The plaintiff might be more amenable to work-out proposals if the client can show that certain payments are escrowed. If no funds are escrowed, it is important to understand why the client has not been able to save money.

- **Who pays the property taxes? Who pays the homeowner’s insurance?**
  Property taxes and homeowner’s insurance are relevant for two reasons: First, they augment proof of who lives in the home. More importantly, back property taxes will result in a higher arrearage, as most lenders will advance the funds to pay the taxes and thus protect their loan’s lien priority. Insurance payments affect the amount of the monthly loan payment, since lender-paid forced-place insurance is usually 150-200 percent more expensive than homeowner-paid insurance.

- **Is there a second or third mortgage on the property?**
  The lender will not be inclined to negotiate a work-out agreement if a second or third mortgage is also delinquent. In Pennsylvania, the mortgage holder who takes the property to Sheriff’s sale first gets paid first. Additionally, certain work-out options might not be available if there is another lien on the property.

- **Does the homeowner have any other debt?**
  Additional liens on the home will affect what work-out options are available to a client. For
example, a bank will not accept a deed in lieu of foreclosure if there are liens on the property that cannot be removed prior to a title transfer. If the homeowner has other debt, that might affect whether she or he can afford a modified mortgage and whether she or he requires additional housing counseling.

**Practice Point**

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

**Negotiation Tasks for Volunteer Attorneys**

- Reach an agreement with opposing counsel regarding postponement of their entry of judgment (or postponement of a sheriff’s sale). Under rules that went into effect January 1, 2011, so long as the homeowner appears at the first conference, a second conference is granted approximately 35 days hence and entry of judgment is automatically postponed to the day after the second conference.

- The order should include the date of the next conciliation conference. Entry of judgment should be postponed to the day *AFTER* the next conference. Be sure to review the order for accuracy.

- Ensure that all parties agree as to what the next steps required of each party shall be. If documents must be submitted to the lender’s attorney, request a list of the required documents and review with the housing counselor and the homeowner.

**If There is No Agreement with the Lender’s Counsel**

- If opposing counsel states that he or she does not have authority to postpone entry of a default judgment or to grant another conciliation conference, ask court staff for a judge pro tem (JPT) conference. The JPT can recommend that the judge order a postponement “over counsel’s objection.”

- If another conciliation conference date is not granted, request a status conference to occur by email or by phone between lender’s counsel, the housing counselor, the court administrator, and you (if you intend to keep the case). You should reserve the right to request another conciliation conference later, if necessary.

**Judge Pro Tem**

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

*For a sample JPT order, see Appendix.*
Troubleshooting Process Problems

- **The lender refuses to negotiate.**
  Examine whether retention of the home is truly affordable for the client.
  - If NO, evaluate other options.
  - If YES, ask court for a conference with the JPT or the judge.

- **Lender’s counsel is unable to reach the plaintiff’s representative to obtain a response.**
  The court will not permit a sheriff sale or entry of default judgment without a response from the lender. Another conference will be scheduled.

- **The lender refuses to provide an answer or cannot be reached during multiple conferences.**
  The court can order a lender’s representative with authority to negotiate to appear in person or be present by telephone during next conference. Please alert the Court Administrator if the lender’s response is lagging despite multiple (more than five) conferences.

Concluding Conciliation Conferences

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

- Obtain copies of the unsigned court order from court staff and the list of documents that the homeowner must submit (if applicable) from opposing counsel. Make sure that copies are given to the client, the housing counselor, VIP paralegals, and yourself.

- Exchange contact information with all parties: the client, the housing counselor, the lender’s attorney, and the JPT (if the JPT will continue to monitor the case).

- Confirm with the housing counselor and the homeowner that communications will go to the lender’s counsel.
ONGOING COMMUNICATION

In General

- It is essential that you take the initiative in communicating with the client, the client’s housing counselor, the lender’s attorney, and court staff to ensure that the negotiation process moves forward. **Do not wait for them to contact you!**

- Check the docket record on a regular basis. This can be done easily by going to [www.courts.phila.gov](http://www.courts.phila.gov) and clicking on “Search Court Records”, then “Search Trial Division-Civil Dockets”, then “Civil Docket Record”, entering the Case ID (the docket number that is listed on your client’s intake form) and then clicking “Submit” and scrolling down to the bottom of the record to review the latest entries.

- A volunteer attorney is not the “attorney of record” and will therefore probably not receive copies of communications sent by the lender to the homeowner. That is why it is essential to follow up on a regular basis with your client to receive copies of any documents sent by the lender to your client.

- Again, you should insist that the homeowner forward copies of all documents she or he receives from the servicer or opposing counsel.

- VIP will email a status update request to you twice per year until the case closes. Thank you for responding to these requests.

- VIP staff is always available to answer questions and provide support!

Rescheduling an Upcoming Conciliation Conference

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

- **Email opposing counsel to ask if they will agree to reschedule (with a copy to the housing counselor).** You should explain the reason for your request. If the issue is that the client is unable to attend (for good reason), opposing counsel and the court may agree to hold the conference with counsel present and excuse the client from appearing.

- **If opposing counsel agrees,** you should email Kate Dugan, law clerk to Judge Robinson, to alert her (at kate.dugan@courts.phila.gov), with a copy to opposing counsel and the housing counselor.
If opposing counsel does not agree, you should email Kate Dugan to request that the conference be rescheduled, with a copy to opposing counsel and the housing counselor. Your email should explain the reason for your request and that opposing counsel opposed your request.

While Negotiating Settlements

- Request that both your client and you receive a copy of the written agreement. Again, it is important to remember that you are not the attorney of record unless you have entered your appearance in the actual foreclosure case, which you would do only if you file preliminary objections or an answer to the complaint.

- Remind your client to contact you upon receipt of the agreement so that you can review the agreement before it is signed. The turnaround time for these agreements is often short, but you should be granted more time upon request to lender’s counsel.

- Review the agreement to determine if its terms are those negotiated at the conciliation conference – they often differ!

- Once the agreement is executed, obtain confirmation from opposing counsel and the case docket record that a praecipe to vacate the judgment and/or stay the sale and dismiss without prejudice was filed.
CLOSING THE CASE

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

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

Introduction

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

STEP 1: The counselor holds a face-to-face meeting with homeowner.

STEP 2: The counselor gathers information about the homeowner’s financial situation, including information about:
- the type of mortgage (FHA, Conventional, VA, etc.)
- the hardship and circumstances surrounding the delinquency

STEP 3: The counselor completes all necessary forms, including those required by the homeowner’s specific lender.

STEP 4: The counselor submits applications to emergency mortgage loan assistance programs if homeowner is eligible.

STEP 5: The counselor sends forms and supporting documentation to lender’s counsel (and possibly also to the lender).
Typical Documents Completed or Collected

**Usual Documentation**

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

**Making Home Affordable Documentation**

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

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

**Challenges Housing Counselors Routinely Face**

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

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

Introduction to General Options

- Refinance the property.

- Apply to state and local payment assistance programs.
  - In Pennsylvania, HEMAP is available (administered by PHFA).
  - In Philadelphia, the Philadelphia Housing Retention Program gives grants until its annual allocation of funds is expended.

- Repay the loan.

- Obtain a forbearance agreement.

- Make a claim to the insurer if the homeowner has mortgage insurance. This is called a partial claim and includes all FHA loans.

- Request a reverse equity mortgage. These loans, available to senior homeowners age 62 and over, convert equity in the property into a loan that must be paid off only upon the homeowner’s death or when the property is sold during the homeowner’s lifetime.

- Modify the loan.

Introduction to FHA-Specific Options

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

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

PRACTICE POINT

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

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

HEMAP Payment Assistance
Homeowners Emergency Mortgage Assistance Program

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

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

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

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

Repayment Plan

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

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

Uses
Repayment plans are most successful when the homeowner has:
- A financial crisis that has been resolved.
- Been unemployed but has since found work.
- Recovered from a temporary disability.

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

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

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

Partial Claim

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

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

Reverse Equity Mortgage

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

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

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

Definition
A loan modification changes the amount of the mortgage payment through a written agreement that permanently changes one or more of the loan’s original terms, such as the:
• Interest rate
• Term
• Unpaid principal balance

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

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

Key Steps to Ensuring Affordability
Homeowners and homeowner advocates may pursue the following solutions in order to make a loan more manageable for the borrower.
• Interest rate reduction, preferably permanent
• Principal reduction (rarely granted)
• Extension of the mortgage term (the number of years over which the mortgage must be paid)
• Extension of the amortization period (the number of years used to calculate the amount of the monthly mortgage payment; e.g., a loan may be amortized over 40 years but may have to be repaid over 30 years, with a balloon payment representing the remaining 10 years of payments due at the end of the 30-year term)
• Fees / costs reduction, including:
  o Inspection / appraisal fees
  o Late charges
  o Attorney’s fees (ask for itemization)
  o NOTE: A reduction in fees is easier to negotiate before judgment than after judgment – entry of judgment adds approximately $2,000 to attorney fees and costs.
Home Affordable Modification Program

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

For more information:
www.makinghomeaffordable.gov  www.hmpadmin.com
www.fanniemae.com/loanlookup  www.freddiemac.com/mymortgage

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

A homeowner will be eligible for HAMP Tier 1 if:

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

A homeowner will be eligible for HAMP Tier 2 if:

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

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

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

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

The HAMP Tier 1 modification waterfall steps to reduce PITI to 31% is as follows:
- Capitalization of arrears (add the arrears to the remaining mortgage)
- Reduction of the interest rate to no lower than 2%
- Extension of the loan repayment period up to 40 years (480 months)
- Forbear principal in a non-interest balloon payment (not required more than 30% of balance)
- Forgive a portion of mortgage principal (optional, very rarely done)

Under HAMP Tier 2, the steps are:
- Capitalization of arrears as in Tier 1
- Adjustment of the interest rate to the Freddie Mac Primary Mortgage Survey rate plus a small adjustment (currently 50 basis points)
- Extension of the loan repayment period up to 40 years (480 months)
- Forbearance of loan principal if pre-modification balance is greater than 115% of the property's fair market value

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

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

Once a homeowner in a trial modification has made 3 timely payments of the modified loan payments, the servicer is supposed to offer the homeowner a permanent loan modification. Since servicers often take many more months to offer a permanent loan modification to the homeowner, the homeowner should be advised to continue making the modified loan payments on a timely basis until a permanent loan modification is signed.
HAMP has a program that is designed to address the modification or release of second mortgages to avoid having the second mortgage go into foreclosure and derail the modification of the first mortgage.

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

**Lender Programs**

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

**PRACTICE**  VIP provides a binder at the conferences with information on federal, state, city and lender-specific programs.**

**POINT:**
NON-RETENTION OPTIONS

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

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

Straight Sale

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

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

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

Short Sale

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

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

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

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

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

Deed in Lieu of Foreclosure

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

Uses
A deed in lieu of foreclosure is most appropriate when:
- The property is abandoned.
- Other options have been exhausted.
- There are no other liens on property.

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

Sheriff’s Sale

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

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

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

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

Home Affordable Foreclosure Alternatives (HAFA)

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

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

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

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

WHAT IS BANKRUPTCY?

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

Chapter 7

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

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

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

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

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

Chapter 13

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

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

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

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

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

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

1. The Automatic Stay - Few other legal steps can provide this immediate and powerful protection of bankruptcy. Functionally, the automatic stay is an injunction that springs into existence upon the filing of the bankruptcy petition. It prevents any attempt to enforce claims against the debtor or property of the debtor or property of the estate. It freezes a foreclosure proceeding and will prevent a sheriff’s sale if notice is provided to the sheriff and creditor prior to sale.

   a. Effect of Prior Bankruptcies - If the debtor had one or more bankruptcies within the prior year, the automatic stay may expire 30 days after the petition or may not spring into existence at all. If the debtor has abused bankruptcy in the past, there may also be prohibitions put in place by the bankruptcy judge.

   a. Duration - The stay typically is in place for the length of the bankruptcy case, but a creditor may seek relief from the stay for cause. In Chapter 7, relief from stay is routinely granted to mortgage lenders if the loan is not current. In Chapter 13, relief from stay will be granted to the mortgage lender unless the plan proposes to cure arrears or otherwise pay off the loan.

2. The Bankruptcy Estate - The bankruptcy estate is created by the filing of the petition. It is broadly construed to include any and all property rights of the debtor as of the date of the petition. In Chapter 13 it includes property rights obtained post-petition. This includes expectant, contingent, and inchoate rights such as causes of action, and expected inheritances.

   a. Exemptions – The debtor is allowed to exempt (carve out) certain amounts of property out of the estate under either the Bankruptcy Code exemptions or under state law. Generally the federal exemptions are more generous than Pennsylvania exemptions. Exception: entireties property (owned by husband and wife) under PA law is immune to individual creditors of husband or wife. Assets that are not exempted may have to be sold, either by a Chapter 7 trustee or by the debtor in Chapter 13 to fund his/her plan.

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

1. **Pre-Bankruptcy Credit Counseling Course.** Such a course is an absolute prerequisite to filing a bankruptcy case. It can be done online, over telephone, or in person.

2. **Paperwork.** A bankruptcy case is initiated by a 7-page Petition. In an emergency, this is all that needs to be filed, along with a certification that credit counseling was obtained, or exigent circumstances excused the failure to get it, and a list of all creditors.
   a. Supporting schedules and statements must be filed within 14 days unless extension sought. At least one extension is usually granted. These are very in-depth documents designed to get full disclosure of a debtor’s financial circumstances, including a list of all debts, assets, income, living expenses and prior financial activities.
   a. **Means testing:** This requirement was added after the Bankruptcy Code was amended in 2005. It applies to debtors whose debts are primarily consumer (i.e. personal vs. business). The test essentially looks at a debtor’s income for the six months prior to filing the bankruptcy and is used to determine whether a debtor should be in Chapter 7 or Chapter 13 bankruptcy and what the minimum length of a Chapter 13 plan should be.

3. **Meeting of Creditors.** This meeting is generally held 30-45 days following the filing of the petition. Creditors are invited to attend but rarely do. In most cases, this is the only proceeding a debtor has to attend. The Trustee (Chapter 7 or 13) questions the debtor regarding her petition. In Chapter 13, the Trustee also wants to ensure that the debtor’s proposed plan is feasible, i.e. the debtor can afford the payments, and the plan is funded sufficiently to pay the claims that need to be paid.

4. **Discharge.**
   a. In Chapter 7, the discharge order is generally entered about 60 days following the meeting of creditors. The case is closed.
   b. In Chapter 13, discharge is entered after all plan payments are completed, generally three to five years after the petition date.
   c. After the case is closed, the automatic stay ends, but the discharge injunction still protects debtor from collection of discharged debts.
D I S A D V A N T A G E S O F B A N K R U P T C Y

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

   While FHA and HAMP guidelines expressly allow modification to be considered by someone in bankruptcy, certain realities of bankruptcy law may make a modification difficult to pursue as efficiently as outside of bankruptcy.
   a. For example, in a Chapter 7 case, the debtor may have no standing to negotiate. The Chapter 7 trustee controls estate property for at least the first 60 days of the case, after which he/she is deemed to have abandoned the property to the debtor if no action is taken to administer the asset.
   b. Bankruptcy Court approval of modification may be required.
   c. The automatic stay precludes any continuation of negotiation through the Mortgage Foreclosure Diversion Program because it is part of the foreclosure action.
Bankruptcy Issue Spotting
in the Diversion Program

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

1. Homeowner has significant unsecured debt making their debt-to-income ratio too high to qualify for a modification. A bankruptcy may address this, assuming the unsecured debt is not excepted from discharge (student loans, taxes, child support/alimony).

2. House is “under water” due to second or third mortgages. Depending on circumstances, including the type of mortgage and value of the home, secondary loans may be reduced or eliminated through a bankruptcy filing.

3. Homeowner has judgments against him/her which, under Pennsylvania law, may be liens against the residence. NOTE: judgments lose their lien status in five years unless renewed (42 Pa. C.S.A. §5526). Some lenders raise this because they have a policy of recording the modification agreement with the Recorder of Deeds, and wrongfully take the position that the modification would be lower in priority to the judgment liens. Depending on the amount of equity in the home and homeowner’s ability to exempt it, bankruptcy can be used to eliminate judgment liens. However, this should not be required as a condition of modification. This should be taken to a JPT before considering bankruptcy to eliminate the judgment liens.

4. Lender is offering only a short repayment plan requiring a monthly payment that homeowner cannot afford. Chapter 13 may allow homeowner to repay over a longer term – five-year maximum.

5. There is significant equity in the property and lender will not forbear to allow homeowner to conduct a private sale. Sale in bankruptcy should be a last resort. You can almost certainly get a postponement of the foreclosure sale to allow for a private sale through a JPT or conference with the judge.

6. Lender will not give a loan modification or repayment plan to the homeowner because she/he is not on the Note but still has an ownership interest in the property. This may arise where the current owner inherited the property or the loan was taken out in the name of a co-owner with better credit. If homeowner is able to cure the arrears in five years, Chapter 13 is an option.

7. Homeowner was discharged in a prior bankruptcy. Some lenders/servicers have denied modifications because the homeowner has been discharged of personal liability, presumably out of fear of violating the discharge injunction. HAMP guidelines address this by requiring the following language to be inserted in Section 1 of the Home Affordable Modification Agreement:
“I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”
VIP Contact Information

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

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

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

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Additional Resources

Philadelphia VIP Website
www.phillyvip.org

National Consumer Law Center
www.consumerlaw.org/issues/homeownership

Pennsylvania Legal Aid Network
www.palegalaid.net

Federal Program Information and Updates
www.makinghomeaffordable.gov
www.hmpadmin.com
www.fanniemae.com/loanlookup
www.freddiemac.com/mymortgage