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Public Interest

Pro Bono Legal Assistance Can Offer Homeowners Hope

Lauren Ascher, The Legal Intelligencer

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At the end of 2016, the largest federal relief program available to homeowners impacted by the financial crisis will expire. Making Home Affordable (MHA) is a government program introduced in 2009 in response to the subprime mortgage crisis. The Home Affordable Modification Plan (HAMP), the first and largest program under MHA, is designed to help financially struggling homeowners avoid foreclosure through loan modifications that are affordable and sustainable for buyers over time. Since its inception, HAMP has provided clear and consistent loan modification guidelines and incentives for borrowers, servicers, and investors alike. The expiration of HAMP will have significant consequences for homeowners throughout Philadelphia.

The subprime mortgage crisis hit Philadelphia hard. Philadelphia has always been a city of homeowners, with a higher homeownership rate per capita than most big cities in the Northeast and Midwest. For nearly all of the approximately 400,000 Philadelphians living below the poverty line, these homes constitute their single most important asset. The subprime mortgage crisis threatened both individual homeowners and the Philadelphia community at large with the potential foreclosure of thousands of homes. By early 2008, nearly 200 homes per month were being auctioned off by the Philadelphia Sheriff's Office.

The creation of the Mortgage Foreclosure Diversion Program through the Court of Common Pleas has helped alleviate this crisis by providing a forum for homeowners to negotiate directly with lenders, ultimately enabling thousands to remain in their homes. Since its inception, volunteer attorneys have provided pro bono legal assistance for many of these homeowners through Philadelphia VIP. But with the expiration of HAMP at the end of 2016, many of these homeowners will once again become vulnerable, and the need for pro bono legal assistance through the Diversion Program will become as markedly urgent as it was in 2008.

Under the leadership of the Judge Annette M. Rizzo, the Mortgage Foreclosure Diversion Program was conceived in 2008 by a steering committee comprised of housing counselors, lenders' counsel, legal services attorneys, court personnel, and government officials. In April 2008, then-Philadelphia Sheriff John Green canceled that month's Sheriff's sale, and then-

President Judge C. Darnell Jones II of the Court of Common Pleas ordered a stay of the May 2008 sale and announced the diversion program as joint general court regulation number 2008-01. In July 2008, an administrative order was entered mandating a face-to-face conciliation conference for all owner-occupied residential foreclosure actions. As the hub of pro bono in Philadelphia, VIP answered the call to help and immediately began training volunteers to represent borrowers.

Conciliation conferences have become the hallmark of the diversion program. They provide a unique opportunity for borrowers to access vital housing counseling and legal services and, together with those advocates, meaningfully engage in negotiations with their lenders. Results of conciliation conferences include forbearance plans, repayment plans, reinstatements, or a "graceful exit," a phrase coined by Rizzo. But the linchpin of the negotiations—of a borrower's likelihood to save his home—has been the loan modification.

HAMP has been available for mortgages executed on or before Jan. 1, 2009, with payments greater than 31 percent of the household income. It provides clear and consistent loan modification guidelines through interest rate reduction, fixed interest rates, principal reduction or forbearance, and term extension. These clear guidelines force accountability on lenders and servicers. In addition, housing counselors and attorneys are able to readily identify instances where a home cannot be saved and shift their counseling to effectuating a graceful exit.

With the end of MHA, and with the HAMP modification guidelines remaining available only for loans insured or guaranteed by the Federal Housing Administration or Veterans Association, most of the residential mortgage industry will be negotiating with homeowners without this standardized loss mitigation option. This poses a risk that servicers will revert to pre-2009 resistance to loan modifications. Of the eligible and processed mortgage foreclosure cases in the diversion program, approximately one-third reach a loan agreement with their lender. Those agreements have been, by and large, sustainable. Approximately 85 percent of homeowners who reached an agreement remained in their homes over 21 months after the agreement date. But without HAMP, this number could plummet. More foreclosures could mean higher numbers of homelessness, instability for children as families are forced to relocate, more abandoned properties, and higher crime rates.

In July 2016, the U.S. Department of Treasury issued a white paper acknowledging that while the housing industry is generally better prepared now to provide assistance to struggling homeowners than it was before the crisis, more work remains to be done. Both servicers and investors will now need to utilize proprietary loss mitigation programs and determine their appropriateness in a post-crisis environment. There is also the hope that the Consumer Financial Protection Bureau (CFPB) regulations issued after the crisis to provide mandatory mortgage servicing industry practices for institutions regulated by CFPB will further assist these homeowners.

But these hopes remain theoretical. Thus far, the only proven way to increase the likelihood of borrowers remaining in their homes is by providing legal assistance. For the cases in which Philadelphia VIP volunteer attorneys have represented homeowners, approximately 75 percent have successfully saved their homes, as compared with an overall diversion program save rate of 34 percent. Without attorneys advocating for the loan modifications that homeowners need, data shows that most will lose their homes.

Fortunately, Philadelphia's Mortgage Foreclosure Diversion Program will continue to provide a forum for homeowners to negotiate directly with lenders even after MHA ends. But it will become even more important for homeowners to have access to pro bono legal representation to advocate for them throughout the negotiation process. Volunteer attorneys are essential for ensuring that lenders and servicers continue to utilize loss mitigation programs. This was true in the early months of the diversion program and will again be true once HAMP ends.

Volunteer attorneys have the tools to change the future for the many borrowers who will no longer have the structure of the HAMP program. Foreclosure rates remain high in Philadelphia, and without HAMP homeowners will be denied an important safeguard. A volunteer attorney can make the difference between these homeowners saving or losing their homes.

Philadelphia VIP provides pro bono legal services to low income clients by recruiting and training volunteer attorneys in private practice. VIP's mission is to provide equal access to justice to low-income Philadelphians by harnessing the already existing capacity within the private bar. VIP has been a key partner in the 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 provides three ways for volunteers to assist homeowners through the diversion program. Ongoing volunteer attorneys represent homeowners at conciliation conferences until the matter is out of the diversion program. Day-of volunteer attorneys agree to be available for a specific morning or afternoon conciliation session to provide emergency legal assistance for homeowners during that day's conciliation conference only. Finally, volunteer paralegals conduct client intakes in City Hall each Thursday. If you are interested in volunteering to help keep low-income clients in their homes and improve our city, please contact Lauren Ascher at lascher@phillyvip.org. •

Lauren Ascher is a supervising attorney at Philadelphia VIP, where she provides support for volunteer attorneys, assists with volunteer recruitment and trainings, and oversees volunteer engagement in the diversion program. Prior to joining VIP, she was a litigation associate and federal law clerk.

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