



Goldbeck McCafferty & McKeever

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

Suite 5000, Mellon Independence Center, 701 Market Street
Philadelphia, PA 19106-1532

Phone: 1.866.413.2311 ♦ Fax: 215.627.7734 ♦ www.goldbecklaw.com

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To: The Pennsylvania House of Representatives

From : Michael McKeever, Esq.
mmckeever@goldbecklaw.com
215-825-6303
610-662-4798 (cell)

Re: Amendments to laws regarding Mortgage Foreclosure

Amend 42 PS 21104 to Discontinue Collection of Sheriff's Commission "The Foreclosure Tax"

Once a judgment in mortgage foreclosure is entered, the Sheriff is entitled to impose a commission of 2% (\$4,000.00 extra sheriff charges on a \$200,000.00 loan payoff, for example) upon the homeowner if the lender accepts funds to bring the loan current, pay the loan off, modify the loan or enter into a repayment plan. This additional commission makes the loan resolution process more cumbersome and expensive for the homeowner.

I would suggest that the section be amended to allow imposition of poundage (commission) only in cases when the property is sold to anyone other than the executing lender (or their successors and assigns) at Sheriff's sale.

Conciliation Conference as part of PHFA HEMAP Program:

Pennsylvania already has one of the most comprehensive and successful foreclosure avoidance programs in the nation, the HEMAP program as administered by the Pennsylvania Housing Finance Agency. The HEMAP demand notice requires the borrower to contact a counseling agency to discuss foreclosure alternatives.

A "pre-foreclosure filing" conciliation conference may be acceptable to lenders so long as:

- It is overseen by PHFA,
- The results or information obtained are available to the lender,
- It involves the lender, housing counselor and homeowner,
- Available only to homeowners who timely apply for HEMAP assistance, and
- Occurs and is decided upon *within the existing HEMAP timeframes.*

As of now, lenders are *not* an active participant in loan resolution while PHFA is considering a HEMAP application. I suggest that this would be the best time to negotiate with all parties.

- PHFA could be a central repository of lender contact information;
- Lenders would be encouraged to provide up to date and accurate contact information, including escalation contact information to PHFA on an annual basis.
- In return, PHFA could make that information available to housing counselors through a secured website and also provide tracking of the HEMAP program from the date of the first initial meeting until resolution or denial of assistance.

PHFA performs some of these tasks and with some minor tweaks and adjustments and perhaps even a funding increase for PHFA's operations, this model program would truly set the standard for the country.

Expedite the Foreclosure Process for Non-Owner Occupied and Vacant Homes

Provide for a County to conduct sales more rapidly for non-owner occupied or vacant homes or provide authority for the Court to conduct foreclosure sales in these circumstances with a power of sale.

Any Court Sanctioned Mediation/Conciliation Program Should be Opt In and contain a sunset provision of no more than 2 years.

An "opt in" program would satisfy the two main components that delay successful loan resolutions; specifically, the willingness and the ability of the homeowner to remain in the home and work diligently with the lender.

Our experience shows that for programs that provide a hearing date for all owners in foreclosure (Philadelphia), approximately 25% to 30% of the homeowners do not take advantage of the hearing. However, additional attorney's fees and costs are assessed to their delinquent loan as the attorney for the lender is required to prepare for each hearing as if the homeowner may appear.



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Model Mortgage Foreclosure Diversion and Conciliation Conference Process

To the extent that the Court intends to establish a program to respond to current conditions regarding residential mortgage foreclosures, we offer the following Model guidelines. These guidelines have been developed by the lender representatives of the Philadelphia Mortgage Foreclosure Steering Committee.

We believe the following elements combine the best features of the Philadelphia, Allegheny and the New Jersey program, recognize the concerns raised by all constituent groups and offer a low cost solution to Courts which are dealing with their own budget issues during these difficult economic circumstances.

The Diversion Program is based upon the premise that each party clearly recognizes their respective responsibilities. Both the homeowner and the lender must understand that the program is offered as an alternative to foreclosure litigation but it is not to be used to litigate the merits of a parties' position. If the homeowner/defendant believes that they have substantial legal defenses to the Action of Mortgage Foreclosure, they should be encouraged to seek the assistance of competent legal counsel to advise them and decline participation in the program. All homeowners/defendants should be encouraged to seek independent legal counsel.

The Model Program contemplates the creation of a process that provides assistance to the borrower in financial distress, recognizes that the financial stress also creates other issues and provides an opportunity for the homeowner and lender to effectively communicate under the Court's jurisdiction, within a time frame that does not substantially impact the lender's legal and contractual rights. On average, every day a loan is in delinquency costs a lender about \$100.00 to \$150.00 per day and makes it more difficult for a homeowner to propose workable solutions as the delinquency increases.

The lender cannot resolve the loan delinquency without review of certain financial information and must often obtain approval of other parties who have an interest in the loan such as: investors, government agencies, mortgage insurance companies, etc. Generally, the lender requires about fifteen (15) days from submission of a completed loan resolution package until they have reached a decision. They often require contact

with the homeowner or housing counselor for clarification regarding specific and unique issues.

Finally, some homes cannot be “saved” notwithstanding the best efforts and good intentions of all involved. The reasons are many (death, disability, irreparable damage, etc), but the adverse effects upon the communities are always the same: declining property values and risk that distressed properties will be used for improper or illegal purposes. In such cases, it is in the community’s interest that foreclosures be completed expeditiously, in order that unsalvageable properties be sold at judicial sale, cleansing often convoluted or over-encumbered titles and making properties available to new homeowners in a position to repair and occupy them, pay taxes and maintain them. For this reason, an expedited-track foreclosure process for such properties should also be implemented for the benefit of the communities in which such distressed properties are located.

Program Highlights:

- Requires the establishment of a centralized hotline number (county or statewide). The hotline would connect the homeowner with a housing counselor and set up an initial meeting with the housing counselor.
- Requires the lender, upon the filing of its Complaint in Mortgage Foreclosure, to include the contact information for its loss mitigation, home retention or collection department so that the homeowner can contact that department and discuss foreclosure alternatives.
- Court shall attach Notice of Mortgage Foreclosure Diversion Program to each Complaint to be served by the Sheriff upon the homeowner/defendant.
- The program only applies to residential owner occupied properties.
- The homeowner must file documents and take other steps to opt into the program, if they do not file the required documents they will not be eligible for a delay of the action.
- Pro-bono attorneys or other legal resources should be trained and made available to homeowners and housing counselors will be trained as to how to assist homeowners in this Court supervised program.
- In order to qualify for a Conciliation Conference, the Homeowner must:
 1. Call the hotline number;
 2. Meet with a housing counselor;
 3. Complete the Court mandated loan resolution package (see attached);
 4. File the required Certificate of Participation (see attached); and

5. Immediately serve copies of the loan resolution package and Certificate of Participation upon lender's counsel
- Plaintiff permitted to exercise all legal rights. The Court may grant a postponement of any Sheriff's Sale for no more than a thirty (30) to sixty (60) day period if the homeowner has complied with all Court orders and there is a reasonable possibility of resolution.
 - The Plaintiff should be permitted to request a conference in cases where, in their opinion, a conference would assist the case to completion.

Conduct of the Conference:

- An informal discussion is favored over a formal hearing.
- Require only that the legal representative of the lender appear at the initial Conciliation/Mediation Conference or allow all parties to appear by telephone as in person appearance creates unnecessary scheduling issues for the Courts, the homeowners, lenders and their counsel.
- Plaintiff/Lender representative with Settlement Authority may be ordered to appear at any subsequent Conciliation/Mediation Conference if such action is deemed warranted by the Court to facilitate resolution.
- Must not be used as a forum to litigate merits but to foster resolution.

Prepared by:
Goldbeck McCafferty & McKeever
Michael McKeever, Esq.
215-825-6303 or 610-662-4798 (cell)
215-825-6304 mmckeever@goldbecklaw.com
215-825-6305 www.goldbecklaw.com



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Potential Benefits to Lenders

- Reflects the current realities of community and court support for these programs, lenders who support these programs are viewed as being part of a solution, rather than as obstacles to loan resolutions.
- Provides a systemic and comprehensive structure for communication and promotes more predictability and uniformity of results
- Avoids wholesale delay caused by blanket moratoria or judicial or other governmental inaction
- May promote development of “fast track” foreclosure process in states that have a lengthy process at present.
- Provides for tracking mechanism and consistent reporting rates
- Housing Counselors provide a certain level of professionalism and a consistent point of contact.
- Reduction of litigated or contested foreclosure cases.
- Reduction of time that litigated or contested foreclosure cases are in litigated status with the court – promotes consistent and efficient disposition of cases