LEGAL LEAGUE 100
QUARTERLY
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Membership Spotlight

Member Q&A

Stephen Hladik, Partner, Hladik, Onorato & Federman discusses navigating COVID-19 and changing state regulations.

Formerly a Deputy Attorney General in charge of the Harrisburg office of the Pennsylvania Bureau of Consumer Protection, Stephen M. Hladik brings a broad range of experience to his mortgage foreclosure, bankruptcy, tax sale, and UDAP legal practice. A graduate of the Pennsylvania State University, Hladik obtained his law degree from Widener University, with honors, where he served as Internal Managing Editor of the Law Review. Hladik gained significant expertise in lending law enforcement while serving in the Pennsylvania Attorney General's Bureau of Consumer Protection, handling UDAP, FDCPA, RESPA, and TILA cases. Hladik is Vice Chair of the Legal League 100 Advisory Council.

Q: What are the biggest challenges facing default legal firms right now?

A: There are a myriad of challenges. There are challenges from every angle. How do you maintain staff? How do you work virtually? How do you conduct hearings and trials virtually? These are all things that were a year ago unheard of in the industry. And yet here we are. Our firm has now done several federal trials over Zoom. Who would have thought a year ago that you would be able to do that?

So, while this is a serious national crisis, in some regards, it has been a beneficial experience to learn how we maximize use of technology,

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Membership Spotlight

Servicers and Regulators Unite for Struggling Borrowers

A panel of experts shared their ideas in a recent Legal League 100 webinar on how the servicing industry and regulators are assisting consumers with pandemic-related forbearance plans and options to keep more Americans in their homes.

The Legal League 100 Special Initiatives Working Group recently held the webinar "Applying the American Rescue Plan Act and the End of Forbearance Plans," discussing the application of the American Rescue Plan Act to troubled homeowners, curbing relevant loss mitigation in the CFPB, and detailing current FHA, VA, and USDA forbearance plans.

Moderated by Marissa Yaker, Managing Attorney of Foreclosure for Padgett Law Group, participants included Ryan Bourgeois, General Counsel and Partner, BDF Law Group; Michelle Garcia Gilbert, Managing Partner, Gilbert Garcia Group; Seth Greenhill, Bankruptcy Attorney, Padgett Law Group; Stephen Hladik, The HOF Law Group; and J. Anthony Van Ness, Van Ness Law Firm.

Hladik began the event by discussing Section 3204 of the American Rescue Plan (ARP) Act, where Congress appropriated $100 million to the "Neighborhood Reinvestment Corporation" to be used for housing counseling for consumers who are behind on their mortgages.

Servicers have been deluged since the outset of the pandemic with inquiries from American homeowners seeking solutions to remain up to date on their housing payments. The ARP provides

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State: Florida

Upending Precedent

By: Richard P. Cohn

Florida supreme court adopts more liberal federal summary judgment standard.

In January, the Florida Supreme Court left decades of precedent behind when it formally abandoned its state standard for evaluating a party's entitlement to summary judgment under Florida Rule of Civil Procedure 1.510 in favor of the more liberal federal standard. In re Amendments to Florida Rule of Civil Procedure 1.510, SC20-1490, 2020 WL 7778179 (Fla. Dec. 31, 2020). The procedure outlined in both the federal and state summary judgment rules contain similar wording and provide a summary procedure for obtaining judgment without a full trial. Under both rules, the movant for summary judgment must establish the lack of a dispute as to a material fact or genuine issue and a legal basis for entry of judgment. As the Florida Supreme Court explained the rules are "materially indistinguishable" and share the same purpose of securing "the just, speedy, and inexpensive determination of every action."

Despite the rule's similarities, the Court noted federal and Florida jurisprudence differed significantly when applying the summary judgment standard established by their respective procedural rules. The Court discussed three primary differences, but noted its discussion was "not intended to limit the scope of the rule amendment. . ." Firstly, the Court pointed out that federal courts recognized the similarities between moving for a directed verdict and moving for summary judgment under Rule 56. Under the federal standard, a movant who can prove that a claim is "so one-sided that one party must prevail as a matter of law" would be entitled to a directed verdict (at trial) or summary judgment (prior to trial). Florida jurisprudence rejected such a comparison requiring a heightened standard of proof on summary judgment.

Secondly, federal courts acknowledged a lack of proof on an essential element of a *non-movant's* claim could form the basis for a summary judgment

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SPRING 2021

FROM THE CHAIR

I hope this letter finds everyone healthy and in good spirits. As we move ahead, I am pleased to see COVID-19 numbers heading down and vaccinations increasing. As I write this letter, I am happy to say that I am on the other side of my second vaccine! Business as usual is in our sights.

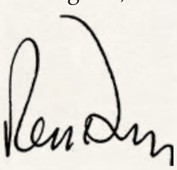
The League celebrated its Spring Servicer Summit on May 19. One of the many adjustments we have made as an industry is the ability to perfect the virtual environment. The Summit brought the industry's finest together virtually to provide insight on various topics such as the state of the industry, diversifying business, navigating the impact of foreclosure delays, understanding regulation, prioritizing compliance, and a deep dive into bankruptcy. As the industry heads into the post-moratorium environment, having the opportunity to explore new issues and opportunities was valuable to all. The Summit's panel videos will be available for registered attendees for the next 90 days.

The Special Initiatives Working Group (SIWG) continues to work diligently. SIWG presented a webinar providing an overview of the American Rescue Plan Act on April 27th. Special thanks to the SIWG team for all their hard work. A recap of the webinar can be found in this newsletter and the recording can be downloaded from LegalLeague100.com/Webinar. SIWG also worked with the Advisory Board to present the CFPB with commentary of its post moratorium recommendations.

As we move ahead, the Advisory Board is working on the creation of a Webinar Subcommittee. The subcommittee will target topics, create topic itineraries, invite members and servicers to present, create the webinar schedule, and market the webinars. This subcommittee will be an integral part of LL100's value to the industry and the membership. Please contact us if you are interested in participating.

We will continue to look forward to the opportunity to provide the industry and our membership with insight and opportunity to work together as we face the changes and challenges that are ahead.

Best regards,



Roy Diaz
Diaz Anselmo & Associates P.A..
Chairman, Legal League 100 Advisory Council

ROY DIAZ, DIAZ ANSELMO & ASSOCIATES P.A.

Roy Diaz is the shareholder of Diaz Anselmo & Associates P.A. in Fort Lauderdale, Florida. Diaz has been a member of the Florida Bar since 1988, concentrating his practice in the areas of real estate, litigation, and bankruptcy. For over 20 years, he has represented lenders, servicers of both conventional and GSE loans, private investors, and real estate developers, with an emphasis on the mortgage servicing industry.

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become more efficient, and work with our staff virtually. But there are also other regulatory burdens created by the pandemic. There are multiple moratoriums that are in place, and for good reason, to protect borrowers, but that has an obvious impact on a lot of default firms nationwide. So, we have to deal with those issues by refocusing work, cross-training staff to handle different or new aspects of the practice, and by comprehensive future planning to deal with the backlog of files when the moratoriums ease.

Even though a file may be on hold for a moratorium, there is still a lot of work that's going on with those files. Borrowers still ask us for reinstatement quotes, payoff quotes. Courts want to know what's going on, and we have local courts with all different rules. That's another one of the challenges. Not only do you have to deal with moratoriums, but you also have instances with different counties in Pennsylvania or in New Jersey, where they have different requirements. Some counties will currently proceed, and some won't. Some counties have implemented different kinds of programs to assist borrowers. It's a lot to stay on top of.

The other thing is also just keeping your clients informed. We have 67 counties, and it's a lot for us to keep track of in one state, let alone on the servicer side—having to keep track of that many states and counties. The biggest thing our firm can do is continually communicate with our clients and communicate with those borrowers that are reaching out to us. We all want to see this work out for everybody.

If you asked me last March, I would have thought everyone would be back to work and back to normal by April, but here we are, over a year later. Somehow, we are all persevering, and we found ways to quickly adapt and keep our clients fully serviced. We found ways to deal with these challenges. There are going to be a lot more to come, but I am confident from what we have learned in the last 12 months that we will be able to handle any future challenges as well.

Q: With California having introduced its own state-level version of the CFPB, do you anticipate other states following suit?

A: That's an excellent question, and yes, I do. Pennsylvania already has, for instance. Our attorney general created a mini-CFPB and retained one of the top litigators from the CFPB to run it. We already have it in place, and they are doing the exact type of regulatory investigative work on the statewide level that the CFPB does on a national level.

I think you are going to see more states do that as well, and I understand why. There's a perception out there amongst some in the legal community that the CFPB is not enforcing things the way it did under prior years. There's a perception among various state attorneys general that they are needed to fill a perceived void in enforcement. We have seen a stepped-up enforcement in Pennsylvania. Our Department of Banking and our Office of the Attorney General have certainly concentrated more on borrower and consumer protection. And I understand why.

In times like this, with higher unemployment and a crisis on a national level, the attorneys general and the regulatory bodies are going to want to look out for borrowers and consumers. This is one of the natural repercussions you are going to see of that: an enhanced regulatory environment and additional bodies like mini-CFPBs popping up around the country.

However, once those are created, they're not just going to go away when COVID-19 ends. So there is just another regulatory layer—and a double layer of enforcement, ultimately—that services are going to have to be on the lookout for it. You are going to have to deal with the AGs, the CFPB, mini-CFPBs, and others, so ultimately it may actually further complicate the process. With a new administration in place, I expect that CFPB enforcement by regulation and legal action will increase, and there will be more joint CFPB-state enforcement actions.

"Servicers and Regulators" continued from Page 1

such answers to consumers who are looking to keep current on their mortgages or are seeking forbearance options.

"Section 3204 of the ARP is strictly for counseling," said Hladik. "It does not allocate funds for direct relief."

Gilbert continued the discussion by introducing key aspects of Section 3205 of the ARP, the Homelessness Assistance and Supportive Services Program, which allocates $5 billion to the HUD Secretary for individuals or families qualified for assistance under the Cranston-Gonzalez National Affordable Housing Act.

Cranston-Gonzalez created the Home Investment Partnership Program (HOME), which provides grants to cities, counties, and states, including Sonoma County in California, the Home Consortium in Wisconsin, and the Texas Department of Housing and Community Affairs as examples. These groups provide tenant-based rental assistance, the development and support of affordable housing (pursuant to Section 212(a) of Cranston-Gonzalez), and other services to the homeless population.

"We are not exactly sure how this Act is going to be implemented…that is going through on the regulatory side," said Gilbert. "The U.S. Congressional Budget Office did estimate the budgetary effects of the Act, and it did add quite a bit to the deficit without adding a lot of corresponding revenue."

Greenhill detailed Section 3206: Homeowner Assistance Fund of the ARP, which provides direct relief to Americans, via $9,961,000 allocated to state or local governments for "Qualified Expenses," funds geared toward preventing mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, which are available to homeowners experiencing financial hardship after January 21, 2020.

The topic switched to the subject of forbearances, and Van Ness detailed specifically GSE-related forbearance plans.

"What this means big picture is that on April 24, 3.4 million homeowners or 6.4% of all mortgages have entered into COVID-19 mortgage forbearance plans," said Van Ness. "I looked up a report from June 9, 2020 which said that 8.8% or 4.66 million were in forbearance plans. It has actually gone down 1.2 million loans. To put that into perspective, we have about 1.5 million or 46% of all homeowners in COVID-19 forbearance plans are Enterprise loans."

For homeowners coming out of forbearance, three basic resolution paths can be followed when a loan is still in default following a forbearance term of 12 months or more, including reinstating the loan upon expiration or over time; modification/deferral changing the loan structure; or other workout options.

And while the panel did discuss the fact that the Consumer Financial Protection Bureau (CFPB) has "suggested" a foreclosure moratorium until 2022, they are asking for input, but the panelists agreed that by the Summer of 2021, all loans or some loans will require additional review in terms of forbearance options.

The panel then turned to Bourgeois who examined the topic of FHA COVID loss mitigation options available to struggling homeowners. Options outlined included the COVID-19 Standalone Partial Claim; the COVID-19 Owner-Occupant Loan Modification; the COVID-19 Combination Partial Claim and Loan Modification; and the COVID-19 FHA Home Affordable Modification Program (FHA-HAMP), Combination Loan Modification and Partial Claim with Reduced Documentation, which may include principal deferment and requires income documentation.

With the Consumer Financial Protection Bureau (CFPB) proposing changes to curb impending foreclosure actions as the emergency federal foreclosure protections are set to expire, the Bureau is seeking public comment in order to prevent the windfall of foreclosures that may overwhelm servicers. The panel highlighted some of these changes and their potential impact.

"I personally enjoyed the read of these changes," said Yaker. "In a nutshell, the CFPB was stating that there was going to be such a large amount of borrowers coming out of forbearance in September and October, the fear was that borrowers who had been delinquent throughout their forbearance would not have ample time to be reviewed for any loss mitigation."

When asked what the future holds for servicers and borrowers beyond the July 1, 2021 date when the moratorium is to be lifted, the panel was cautious.

"Even with the exceptions, it sounds like the CFPB won't allow foreclosures until the servicer has at least attempted contact after the effective date of the rule," said Greenhill. "I don't anticipate much movement until after the effective date of the CFPB rules."

Van Ness said, "My guess is the CFPB will still have the prohibition on FHA, Fannie Mae, and Freddie Mac loans," said Van Ness. "Hopefully they will allow the conventional loans to proceed in the borrower's best interest. I am hoping the CFPB will meet the servicers halfway in allowing us to get the borrowers moving where they can."

Click here to access a recording of the Legal League 100 webinar "Applying the American Rescue Plan Act and the End of Forbearance Plans."

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for the movant. Said differently, there is no affirmative duty on the movant to negate an opponents claim if the non-movant fails to provide evidence to support his claim. The Court elaborated that under this standard, the movant's burden on summary judgment will change depending on the material issues and which party carries the burden of proof on those issues. In comparison, Florida courts required "the moving party [to] conclusively… disprove the nonmovant's theory of the case in order to eliminate any issue of fact" and prevail on summary judgment.

Thirdly, under the federal standard, summary judgment should not be granted if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." The Court explained that when "opposing parties tell two different stories, one of which is blatantly contradicted by the record so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Florida courts on the other hand, "adopted an expansive understanding of what constitutes a genuine (i.e., triable) issue of material fact." Under that standard, Florida courts were required to deny summary judgment if there was the "slightest doubt" of a factual issue created by "any competent evidence…however credible or incredible, substantial or trivial."

The Court reconciled the differences between the federal and state summary judgment standards by amending Florida's Rule 1.510. The Court did not make any substantive changes to the text of Rule 1.510, but added a notation within subsection 1.510(c) indicating the rule would "be construed and applied in accordance with the federal summary judgment standard articulated in Celotex, Anderson, and Matsushita Elec. Indus." The amendment aligns Florida courts with federal courts and 38 other U.S. jurisdictions which already adopted the federal standard for summary judgment.

The Court noted its intended purpose for amending Rule 1.510 was to further its goals of (1) improving "the fairness and efficiency of Florida's civil justice system," (2) relieving "parties from the expense and burden of meritless litigation," and (3) saving "the work of juries for cases where there are real factual disputes that need resolution." The amendment to Rule 1.510 will take effect May 1, 2021 and is sure to increase the number of summary judgment motions by both plaintiffs and defendants. Since there is a plethora of precedent applying the federal summary judgment standard, the amendments should be easily adopted and applied by Florida courts and promptly accomplish the Court's stated goals.

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Foreclosure Moratoria
Key factors for a continuance.

By: Fernando Gonzales-Portillo

The COVID-19 health pandemic has had a drastic effect on the country and the world as a whole. Equally as world-shifting as the pandemic is the legislation passed to address COVID-19, such the CARES ACT, which has upended financial services litigation. There is a very real concern of a future logjam in the courts. One of the biggest challenges servicers now face is staying in compliance with mortgage moratoria on federally related loans. The moratoria have been extended several times and may be extended into the second or third quarters of 2021.

Of the restrictions imposed by the GSE moratoria, one of hardest difficulties is ensuring that final judgments are not entered, as that is not entirely within the control of servicers. To ensure compliance, loan servicers are often at the mercy of the court. Judges, particularly those who remember the backlog of foreclosure cases following the 2008 housing crash, are especially skeptical of delaying foreclosure cases. Judges are well aware there will be another backlog in the future as trials were suspended in the early months of the COVID-19 pandemic and continue to be suspended in some counties. To move their docket, some judges in Florida are sending Notices of Trial without consulting any party to the case. This is forcing foreclosure counsel to file motions to continue the trial. Many times, both the servicer and the borrower do not want to proceed to trial. Once the motion is filed, judges have been treating motions to continue very differently from each other, so there is no uniform consistency, even within the same judicial circuit.

It is critical that servicers and their respective counsel are aware of how their presiding judges are handling the requests for continuance based on the moratoria holds and tailor motions to continue based on the judges' approach to these holds. Fortunately, some judges have been very deferential to the moratorium holds and granted continuances upon request from the Plaintiff without much resistance. Other judges in Florida have requested more information and asked lender's counsel to identify the type of loan and whether the loan type falls under the CARES Act or other moratoria holds. While this means that FHA, HUD, VA, USDA, Fannie Mae, and Freddie Mac loans may be granted continuances more frequently, servicers who have established internal holds for conventional loans, that mirror the federal loan moratoria, will be left in a difficult position when seeking to continue the trial. This approach by judges has created the most trouble, as internal holds that mirror federal loan moratoria have not been as persuasive. Finally, some judges in Florida have been skeptical of the federal moratoria as a whole and have resisted continuing trials even if the loan is one of the federally related mortgages. Judges who have taken this approach have requested that lenders confirm the occupancy status of the property before granting any continuance. If vacant, the judge will want to move forward.

When seeking to continue a trial due to COVID-19 federal moratoria, it is important to remember a several key factors that will potentially help convince a judge that is skeptical on continuing the trial. First, always identify what type of loan it is, whether it is a government-backed loan or a conventional loan. Secondly, in the motion to continue, the new expiration date of the moratorium should be identified. This will allow the judge to reset the case for a trial date after the end of the moratorium. Thirdly, include as an exhibit the latest mortgagee letter or press release that has announced an extension of the moratorium as an exhibit. While this is not needed for a motion to continue, some Florida judges have been receptive of these documents as it gives them a guideline and update for when the moratorium is expected to end instead of relying solely on representations of counsel.

Another consideration for a motion to continue is to frame the moratorium hold not as a regulation that requires the court to stop from proceeding such as a bankruptcy stay, but rather as a federal department or regulatory agency mandate the servicer must comply with or face potential liability. Judges can be territorial and fiercely protective of the separation of powers. Framing the motion to continue as something the court must do will only make the judge more resistant to granting the continuance. Asking the court to continue as trial due to the respective moratorium, so that the servicer is not prejudiced, has been more persuasive to judges. Finally, pursuant to Florida Rule of Civil Procedure 1.460, attaching a short statement of the lender's consent to continuance on basis of the moratorium hold as part of the motion to continue is another best practice to consider. This short-signed statement will help to convince a judge that the lender is seeking continuance based on the moratorium rather than potential unreadiness of counsel.

If the COVID-19 moratoria on foreclosures continues, judges may become impatient in granting continuances of foreclosure trials. Many Florida judges are already handling trials on remote platforms moving their dockets forward. In the future, as judges become more reluctant to grant continuances, servicers will need to be ready to move forward to judgment, settle the case, or dismiss the case. Many times, none of these options will be favorable and some will not be a viable option. Judges, when reviewing the motions, will be more likely to grant the continuance if the servicers' counsel includes the key factors giving the judge many bases to rule in favor of the servicer.

Fernando Gonzales-Portillo is an Associate Attorney at the Fort Lauderdale office of McCalla Raymer Leibert Pierce. Originally from Lima, Peru, Gonzales-Portillo has been practicing for the past five years primarily in financial services litigation and real estate litigation. He is admitted to practice in Florida, New York, New Jersey, and the District of Columbia.

States: Illinois

'Early Resolution' Could Add Extra Complications

Here's how one county's residential eviction and consumer debt "Early Resolution Program" could impact servicers and other stakeholders.

By: Benjamin Burstein

Navigating the ever-changing landscape of the default industry during the pandemic has proven challenging to say the least, with each jurisdiction implementing its own unique requirements and procedures at a moment's notice. This is certainly the case with Cook County's Residential Eviction and Consumer Debt "Early Resolution Program," or "ERP."

The Cook County General Administrative Order 2020-09 that created the ERP was entered on December 14, 2020 and amended January 6, 2021. It applies to all Cook County eviction and consumer debt actions filed on or after March 27, 2020. The ERP first requires that plaintiff mail Cook County's prescribed "Notice of ERP" to all defendants for cases filed on or after March 27, 2020 through January 25, 2021. For any case filed after January 25, 2021, the plaintiff must serve the Notice of ERP with the summons. The ERP Notice advises defendants of the existence of the program and provides contact information for free legal aid services.

More importantly, under the ERP, the court sets an automatic, 30-day status date upon filing of the complaint and the case is scheduled on a separate "Case Management" court call, with all hearings heard remotely via the Zoom application. The case remains on the Case Management court call until the plaintiff obtains service of the summons and complaint. If a defendant appears in court, the defendant will be referred to legal aid services and the case is scheduled for a "Case Manager Meeting" with a "Resource Case Manager." This is essentially a mediation session held via Zoom where settlement is encouraged. After the Case Manager Meeting, the case is scheduled for another date on the Case Management court call to report back to the presiding judge. We expect that this will be the first opportunity to ask for the case to be transferred to the traditional trial call where the plaintiff can seek entry of judgment, with the case remaining on the Case Management call for status if an agreement is reached during the Case Management Meeting.

Unfortunately for the plaintiff, the ERP is going to create several added required court appearances and several months to case timelines in Cook County for numerous reasons. The plaintiff is required to appear in court 30 days after the complaint filing, which means that court appearances, possibly multiple court appearances, are required before service is obtained. This was not the case prior to the ERP.

Where a defendant appears in court, the added time and cost is greatly increased. Legal aid is being made available to defendants that otherwise would not have legal representation. The Case Management court call and Case Assessment add at least three required attorney appearances and, at the very least, one month of time before the plaintiff can even seek entry of judgment. Even where no defendant initially appears, the plaintiff is still looking at the added court appearances prior to service and the risk that the case is referred back to the Case Management court call if a defendant appears at any point during the case.

The ERP is too new to tell for certain exactly how much time and cost will be added to Cook County residential eviction and consumer debt actions and what other unanticipated effects it may cause. However, just like any new judicial program that is implemented, firms should build out a process to ensure they stay in compliance and save as much time as possible. Any party subject to Cook County's new process needs to consider these new requirements when planning to navigate the already challenging landscape of residential eviction and consumer debt during the pandemic.

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Possession of Property During a Bankruptcy

Examining *City of Chicago v. Fulton* its impact on the courts.

By: Seth Greenhill, Esq., CarlosHernandez-Vivoni, Esq.

On January 14, 2021, the United States Supreme Court handed down their decision in *City of Chicago v. Fulton*, No. 19-357, 2021 WL 125106 (Jan. 14, 2021). The question before the court was whether an entity violates §362(a)(3) by retaining possession of a debtor's property after a bankruptcy petition is filed. **The court held that mere retention of estate property after the filing of a bankruptcy petition does not violate §362(a)(3) of the Bankruptcy Code.**

Until this decision, the majority position held by the Second, Seventh, Eighth, Ninth, and Eleventh Circuits was that the automatic stay prohibited a creditor's passive retention of property seized before a bankruptcy case began. *Weber v. SEFCU* (In re Weber), 719 F.3d 72, 81 (2d Cir. 2013); *Thompson v. General Motors Acceptance Corp.*, 566 F.3d 699 (7th Cir. 2009), *Knaus v. Concordia Lumber Co.* (In re Knaus), 889 F.2d 773, 775 (8th Cir. 1989); *California Emp't Dev. Dep't v. Taxel* (In re Del Mission Ltd.), 98 F.3d 1147, 1151 (9th Cir. 1996); *Motors Acceptance Corp. v. Rozier* (In re Rozier), 376 F.3d 1323, 1324 (11th Cir. 2004).

In contrast, the minority view sustained by the Third, Tenth, and D.C. Circuits, had held that a creditor did not violate the automatic stay by failing to return property seized pre-bankruptcy, and that questions concerning a creditor's obligations to surrender such assets were instead governed exclusively by Section 542(a). In re Denby-Peterson, 941 F.3d 115, 125-126 (3d Cir. 2019); *WD Equip., LLC v. Cowen* (In re Cowen), 849 F.3d 943, 950 (10th Cir. 2017); *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1474 (D.C. Cir. 1991)

Facts

The facts of the case are rather simple. The City of Chicago impounded respondent's vehicle for failure to pay fines for motor vehicle infractions. Each respondent filed a Chapter 13 bankruptcy petition and requested that the city return his or her vehicle. The argument was that the mere retention of the vehicles, which is considered property of the bankruptcy estate, violated §362(a)(3) which prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

Analysis

Writing for the majority, Justice Alito engaged in a textual analysis by finding that taken together, the most natural reading of the terms "stay," "act," and "exercise control" is that §362(a)(3) prohibits affirmative acts that would disturb the status quo of the estate property as of the time when the bankruptcy was filed. The court also analyzed the language in Section 542(a) which states: "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate."

The court found that reading §362(a)(3) to cover retention would create two serious problems. First, it would render the central command of §542(a) largely superfluous. Second, it would render the commands of §362(a)(3) and §542 contradictory. Instead, the court found the better account of the two provisions is that §362(a)(3) prohibits collection efforts outside the bankruptcy proceeding that would change the status quo, while §542(a) works within the bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee. Furthermore, the majority found that the 1984 amendment, which added the phrase regarding exercise of control, simply extended the stay to acts that would change the status quo with respect to intangible property and acts that would change the status quo with respect to tangible property without "obtaining" such property.

Justice Sotomayor, who issued a concurring opinion, engaged in a more pragmatic approach. She stated that regardless of whether the city's policy of refusing to return impounded vehicles satisfies the letter of the code, it hardly comports with its spirit. As an example she stated that after a driver is assessed a fine and is unable to pay, the balance balloons and late fees accrue. The driver is unable to get to work in order to fund the Chapter 13 plan.

Interestingly, Justice Sotomayor did state that the court has not decided whether and when §362(a)'s other provisions may require a creditor to return a debtor's property. She found that any gap in this court's ruling should be addressed by rule drafters and policymakers. She urged Congress to offer a statutory fix.

Direct Effects

The decision releases the immediate burden of turnover placed upon lenders that have obtain the lawful possession of debtor's property, pre-petition and in accordance with state law. The creditor will not be held in violation of the automatic stay for its passive action of holding the status quo.

Before the decision, there was considerable uncertainty. The most conservative view on this split of authorities ("the majority view") required immediate turnover of property once a bankruptcy petition was filed. Not doing so, would have subjected the creditor to a finding of a violation of the automatic stay.

The majority view before this decision created several complications upon creditors by increasing costs, litigation, potential losses, and different parties claiming the right of possession. The US Supreme Court has eliminated the uncertainty. Now the burden is on the party with the "right" to the turnover cause of action to move things along.

Turnover of property has its own process and defenses under 11 U.S.C. § 542. With this decision, defenses are no longer rendered secondary. With the burden shifted, Debtor or the Trustee must take affirmative action to recover possession. The turnover request will enable early court intervention and a forum for creditor defenses. Creditor will not be penalized for the mere possession of the property while clarifying the specific concerns that the turnover action may raise.

Property Preservation

Often times, we are approached by clients asking if they may engage in property preservation. It has been (and continues to be) our position that in general, property preservation violates the automatic stay, particularly §362(a)(3). This ruling further solidifies that position. Thus, if a creditor wishes to engage in property preservation, including but not limited to "winterization", it is recommended that relief from stay is obtained for the limited purpose of engaging in property preservation.

Nonetheless, we believe there is an exception to this general rule. The exception is if the property preservation is necessary to remedy an "attractive nuisance." Under this legal doctrine, when a child of tender years comes upon a premise by virtue of its attractiveness, the legal effect is that of an implied invitation to do so and such child is regarded as having right to be on the premises. The child is not treated as

"Possession of Property" continued on Page 13

"Possession of Property" continued from Page 12

a trespasser. 80 Am. Jur. Trials 535 (Originally published in 2001)

Although this doctrine is interpreted slightly differently in each jurisdiction, the general rule is that a landowner is liable for injuries and or death suffered by a child as a result of a dangerous condition that exists on the land that the owner knows about and fails to exercise reasonable care in removing.

Despite the fact the owner bears ultimate liability, this liability may extend to creditors, particularly mortgage servicers and lenders if the creditors are aware of the danger and fail to take appropriate steps to remedy it.

If faced with a situation regarding an attractive nuisance, many practitioners recommend immediately remedying the violations and then seeking relief from the automatic stay *nunc pro tunc*. However, this may not be the best course of action. As the United Stated Supreme Court recently reiterated in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano* (2020), "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States v. Gillespie*, 666 F.Supp. 1137, 1139 (ND III. 1987).

Practitioners may be better off filing an emergency motion for stay relief and then remedying the violations. Please keep in mind that there is not one size that fits all when dealing with these types of issues. All must be analyzed and approached carefully on a case-by-case basis.

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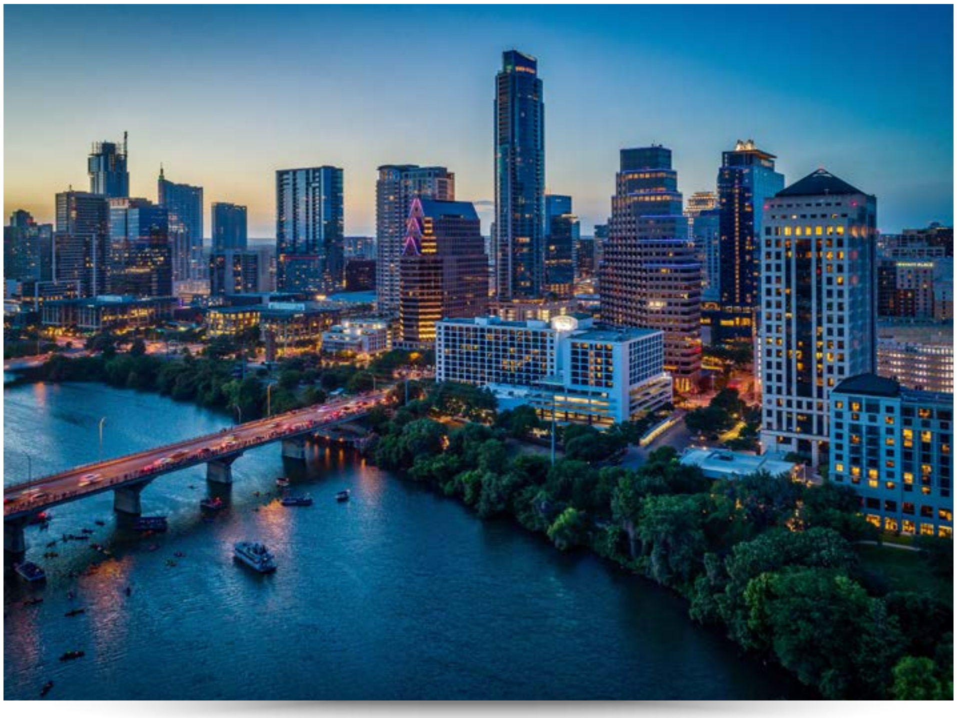

States: Texas

Implications of *PNC v. Howard*

The Texas Supreme Court examines equitable subrogation.

By: Philip Danaher

The Texas Supreme Court continued its expansion of the effects of equitable subrogation in favor of lenders in its recent opinion of *PNC v. Howard*. For those who are unfamiliar with the concept, equitable subrogation is an equitable remedy that allows a lender whose lien is found to be invalid to still retain a lien equal to any amounts it paid to discharge other liens secured by real property. The lender is said to "step into the shoes" of the prior lender and acquire its lien interest.

Texas has a long history of liberally applying the doctrine in favor of lenders. More recently, in *LaSalle v. White*, the court found that the doctrine could be used to salvage a lender's lien interest in cases involving constitutionally non-compliant home equity loans. And in 2020, the Supreme Court clarified in *Zepeda v. Federal Home Loan Mortgage Corporation* that the lender's right to equitable subrogation is "fixed" when the prior lien is discharged and the lender does not have to show that it "did equity" in order to be entitled to the equitable remedy.

In *Howard*, the Supreme Court considered whether equitable subrogation should be applied when a lender's lien is otherwise barred by the statute of limitations. The lender, PNC Bank (PNC), was the owner of a mortgage used by the borrowers, John and Amy Howard (the Howards), to pay off their two prior purchase money mortgages. The original lender of the Howards' refinance was Bank of Indiana. Sometime in 2008, the Howards defaulted on their note and the lender at the time and successor to Bank of Indiana, National City Bank, provided notice of default in January 2009 followed by a notice of acceleration in mid-2009. Despite the transfer of the mortgage to National City Bank, the lien was foreclosed in the name of Bank of Indiana.

The Howards filed suit against Bank of Indiana challenging its foreclosure on the basis that it had assigned the loan and did not have standing to foreclose. While that suit was pending, PNC acquired the loan and was also named as a defendant. The Howards successfully challenged Bank of Indiana's foreclosure, leaving only their claims against PNC. PNC then filed a counterclaim for foreclosure. However, by the time PNC filed its counterclaim, the statute of limitations had already run on its lien. In order to avoid a total loss of its lien, PNC asserted an alternative claim for equitable subrogation.

The trial court entered a judgment against PNC declaring PNC's lien to be unenforceable. PNC appealed, arguing that even if the statute of limitations ran to enforce its lien, it still retained a lien on the property under the doctrine of equitable subrogation based upon the payoff of the Howards' prior purchase money mortgages. The court of appeals affirmed judgment against PNC. In doing so, the court of appeals weighted PNC's failure to timely pursue its foreclosure claim against its claim for an equitable lien and found that, to the extent PNC had an equitable lien, it had forfeited it by falling to time foreclose on it.

PNC petitioned the Supreme Court arguing that its opinion *Zepeda*—which came shortly after the court of appeals issued its opinion—required reversal. The Supreme Court agreed with PNC and reversed. In doing so, the Supreme Court reaffirmed its holding in *Zepeda* that a lender's negligence in preserving its rights under its lien does not deprive the lender of its rights under equitable subrogation. Thus, the Supreme Court reasoned, PNC's failure to foreclose its lien within the statute of limitations did not affect its equitable subrogation rights.

The *Howard* decision has massive implications for lenders in Texas. Over the past several years since the housing market collapse, the statute of limitations defense continues to present a substantial risk of loss to lenders holding loans that are severely delinquent. Under *Howard*, lenders can now rely on equitable subrogation to alleviate that risk, but to what extent?

One question that the Supreme Court did not expressly answer is what the statute of limitations is for a lender to enforce its equitable subrogation rights. Texas Courts in the past have applied the limitations period applicable to the lien paid off. This holding does not appear to have been modified in *Howard* as the Supreme Court acknowledged that the lender's equitable subrogation rights were "necessarily limited by the conditions of the discharged lien." Based upon this language, the Supreme Court would presumably use the maturity date of the prior lien.

Howard is yet another example of the willingness of the Supreme Court to continue to liberally apply the doctrine of equitable subrogation to protect a secured lender's rights. The Supreme Court has clearly stated that the policy behind this is to act as a hedge against the risk of refinancing in Texas in order to open the credit market to Texas borrowers. And based upon its recent holdings in *White, Zepeda,* and now *Howard*, it appears that policy will continue.

Philip Danaher is a Senior Attorney in the litigation department of Mackie Wolf Zientz & Mann, P.C. His practice involves representing creditors in matters regarding mortgage-lending litigation. Danaher attended the University of Dallas as an undergraduate, where he earned a B.A. in Politics. He earned his Juris Doctor from Tulane Law School and was admitted to the State Bar of Texas in 2011. He can be reached at pdanaher@mwzmlaw.com.

Member Highlights

Michael Anselmo Joins the Codilis Family of Firms

Recently named Managing Attorney of Real Estate, Anselmo will be based in the firm's Illinois office. Codilis & Associates, P.C. (C&A), an end-to-end creditors' rights and real estate law firm established to serve the needs of mortgage lenders and servicers, is pleased to announce the addition of **Michael Anselmo** as Managing Attorney of Real Estate.

Prior to joining Codilis, Anselmo was an attorney with the Illinois office of Diaz Anselmo & Associates P.A., a multistate creditor's rights firm, and brings with him nine years of default servicing experience. Anselmo practices in the areas of real estate law, including REO closings and title. In his new role, Anselmo will serve as Managing Attorney of Real Estate out of the Burr Ridge, Illinois, office location of the Codilis Family of Firms.

On joining the Codilis Family of Firms, Anselmo stated, "I am extremely pleased to be joining a firm with such a resoundingly positive reputation and for having the opportunity to take part in this dynamic team's solidarity. I look forward to incorporating my experience to only enhance Codilis' real estate department's successes."

Adam Codilis, President of Codilis & Associates, P.C., stated, "Michael will make a great addition to the Codilis team with his fresh perspectives and established industry know-how—we know he'll become an asset to the Codilis firms, and we're excited to add him to our ranks."

Established in 1977 to provide legal services throughout the state of Illinois, Codilis & Associates, P.C. is celebrating more than 40 years of serving the needs of mortgage lenders and servicers. The firms' five-state footprint includes Codilis & Moody, P.C., established in 1988; and Codilis, Moody, & Circelli, P.C., established in 2006 to provide similar services throughout Texas and Wisconsin respectively. Codilis Law, LLC, joined the Codilis Family of Firms in 2016 serving the state of Indiana; and Codilis, Moody, & Circelli, P.C., expanded its practice to cover the entire state of Wisconsin in 2017. The firms are active in the Mortgage Bankers Association of America (MBA), the American Legal and Financial Network (ALFN), Legal League 100, USFN, as well as various bar associations and bankruptcy bar associations in their respective states.

The firms have proudly served the industry for more than a century combined, taking responsibility to represent creditors in the most effective, efficient, and responsible manner, providing "best-in-class" foreclosure, bankruptcy, and REO services. The firms continually re-invest in its technology, its people, and its processes. This commitment is reflected in the firms' relationships with the courts, client scorecards, and its collaborative approach to resolving matters built through a decades-long commitment to excellent service. The firms understand and appreciate the technology, information, and social revolution that continue around mortgage servicing, and are committed to being the leader in this area providing services that reflect a fair and balanced approach to protecting creditor rights in the context of social and legal responsibility while continuously enhancing its services.

Command Paper

The Three Ms: Examining Mortgage Modification Mediation Programs

PAPER FORWARD: This paper was put together by LL100's Special Initiatives Working Group (SIWG) to provide important information on loss mitigation, particularly within the bankruptcy arena. SIWG believes there will be a substantial increase in loss mitigation due to the effects of COVID-19.

More importantly, SIWG believes that many bankruptcy courts will implement their own Mortgage Modification Mediation (MMM) program. As a result, our industry professionals should have an understanding as to how this works in order quickly adapt to the influx of loss mitigation that is expected to occur.

SIWG's goal is that the following information will assist the industry as we begin to handle more loss mitigation requests in this COVID-19 environment.

The Legal League would like to recognize the following members of the Special Initiatives Working Group for their contribution to this project.

Ryan Bourgeois | **Michelle Gilbert**

Marissa Yaker | **Seth Greenhill**

Loss Mitigation Overview

Overarching Federal Regulation- 12 CFR 1024.41- Loss Mitigation Procedures

When reviewing borrowers for loss mitigation, it is important to first start with 12 CFR 1024.41 that covers loss mitigation procedures for servicers. The questions to ask before moving into what the regulation requires are: what loans, and who falls under 12 CFR 1024.41?

What Mortgages fall under 12 CFR 1024.41?

A **mortgage loan** means any federally related mortgage loan and does not include open-end lines of credit.

A **federally related mortgage loan** means any loan that is secured by a first or subordinate lien on a residential real property, including a refinancing of any secured loan on residential property.

Additionally, the loan is made in whole or in part by any lender that is either regulated by or whose deposits or accounts by any agency of the Federal Government, and insured, guaranteed, supplemented or assisted in any way, by the Secretary of the Department of Housing and Urban Development, is intended by the originating lender to the Fannie Mae, Ginnie Mae, Freddie Mac, or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors).

This can include any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property if the contract is funded in whole or in part by one of the agencies listed above.

Who is excluded from compliance with the Consumer Financial Protection Bureau's (CFPB's) Loss Mitigation Requirements?

- A servicer that qualifies as a small servicer (5,000 or fewer mortgage loans).
- A servicer for any reverse mortgage transaction as defined by 1024.31.
- A servicer for any mortgage loan for which the servicer is a qualified lender as defined in 12 CFR 617.7000.

Procedures for Compliance with the CFPB's Loss Mitigation Rule

Receipt of a Loss Mitigation Application

The first step is to determine whether the loss mitigation application is complete or incomplete.

A complete loss mitigation application means (12 CFR 1024.41(b)(1)): An application in connection with which a servicer has received all the required information needed from a borrower in evaluating the application for the loss mitigation options available to the borrower.

Important items to note about a complete loss mitigation application per the official interpretation of 41(b)(1)

- A servicer has the flexibility to establish its application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options.
- A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower.
- A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower.

Review of Loss Mitigation Application Submission 12 CFR 1024.41(b)(2)

If an application is **received 45 days or more** before a foreclosure sale:

- Promptly upon receipt of the loss mitigation application, review the application to determine if it is complete.
- Notify the borrower in writing within five days (excluding legal public holidays and weekends) after receiving the loss mitigation application that the servicer acknowledges receipt of the application, and that the servicer has determined that the application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section.
    - **Foreclosure sale not scheduled:**
    For purposes of § 1024.41(b)(2)(i), if no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale.
    - **Foreclosure sale re-scheduled:**
    The protections under § 1024.41 that have been determined to apply to a borrower pursuant to § 1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.

If a complete loss mitigation application is received ***more than 37 days before*** a foreclosure sale:

- Within 30 days of receiving the complete loss mitigation application, shall evaluate the borrower for all loss mitigation options available to the borrower.
- Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for appealing, as provided for in paragraph (h) of this section.

Time Period Disclosure Requirements 12 CFR 1024.41(b)(2)(ii)

Time period disclosure requirements under the CFPB:

- **Thirty days is generally reasonable.**
  In general, and subject to the restrictions described in comments 41(b)(2)(ii)-2 and -3, a servicer complies with the requirement to include a reasonable date in the written notice required under § 1024.41(b)(2)(i)(B) by including a date that is 30 days after the date the servicer provides the written notice.

- **No later than the next milestone.**
  For purposes of § 1024.41(b)(2)(ii), subject to the restriction described in comment 41(b)(2)(ii)-3, the reasonable date must be no later than the earliest of:

  - The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower.
  - The date that is the 120th day of the borrower's delinquency.
  - The date that is 90 days before a foreclosure sale.
  - The date that is 38 days before a foreclosure sale.
    - **Seven-day minimum**. A reasonable date for purposes of § 1024.41(b)(2)(ii) must never be less than seven days from the date on which the servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).

COVID-19 Loss Mitigation Options 12 CFR 1024.41(c)(2)(v)

There are new additions to the CFPB Loss Mitigation Rule, taking note of the COVID-19 pandemic. A servicer may offer a borrower a loss mitigation option based upon the evaluation of an incomplete application, if all the following criteria are met:

- The loss mitigation option permits the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this paragraph (c)(2)(v)(A)(1), "covered amounts" includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing financial hardship due, directly or indirectly, to the COVID-19 emergency, including a payment forbearance program made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056). It also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly, or indirectly, to the COVID-19 emergency. For purposes of this paragraph (c)(2)(v)(A)(1), "COVID-19 emergency" has the same meaning as under the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)). For purposes of this paragraph (c)(2)(v)(A)(1), "the term of the mortgage loan" means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

- Any amounts that the borrower may delay paying as described in paragraph (c)(2)(v)(A)(1) of this section do not accrue interest. The servicer does not charge any fee in connection with the loss mitigation option. The servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option.

- The borrower's acceptance of an offer made pursuant to paragraph (c)(2)(v)(A) of this section ends any preexisting delinquency on the mortgage loan.

Once the borrower accepts an offer made pursuant to paragraph (c)(2)(v)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section concerning any loss mitigation application the borrower submitted before the servicer's offer of the loss mitigation option described in paragraph (c)(2)(v)(A) of this section.

Prohibition of Foreclosure Referral

Last, but not least, it is important to remember that a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- A borrower's mortgage loan obligation is more than 120 days delinquent.

- The foreclosure is based on a borrower's violation of a due-on-sale clause.

- The servicer is joining the foreclosure action of a superior or subordinate lienholder.

Agency Loss Mitigation Overview

Below is a closer look at the current agency loss mitigation options.

Fannie Mae

Fannie Mae offers mortgage servicers flexible options to help homeowners retain their homes while enduring a temporary financial hardship[1]. Fannie Mae provides a workout hierarchy table for guidance and the order of evaluation for available workout options for a conventional first-lien mortgage loan[2].

[1] Fannie Mae/Servicing/Loss Mitigation, https://singlefamily.fanniemae/servicing/loss-mitigation

[2] Fannie Mae/Servicing/Loss Mitigation, https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-F-Servicing-Guide-Procedures-Exhibits-Quick-Referen/Chapter-F-2-Exhibits/F-2-11-Fannie-Mae-s-Workout-Hierarchy/1045712141/F-2-11-Fannie-Mae-s-Workout-Hierarchy-06-13-2018.htm?_ga=2.169131941.505936838.1608584807-1851219126.1601654035

Temporary Hardship	
The following table describes the servicer's requirements if the borrower is experiencing or has experienced a temporary hardship resulting from a short-term decrease in income or increase in expenses.	
If the hardship has…	**Then the servicer must consider a…**
been resolved and the borrower does not have the ability to reinstate the mortgage loan	• D2-3.2-02, Repayment Plan
been resolved and the borrower does not have the ability to afford a repayment plan	• D2-3.2-06, Payment Deferral
not been resolved	• D2-3.2-01, Forbearance Plan
Permanent Hardship	
If the borrower is experiencing a hardship that has resulted in a permanent or long-term decrease in income or increase in expenses, the servicer must evaluate the borrower for a workout option in the following order: • D2-3.2-08, Fannie Mae Flex Modification • D2-3.3-01, Fannie Mae Short Sale • D2-3.3-02, Fannie Mae Mortgage Release (Deed-in-Lieu of Foreclosure) **Note:** If a borrower requests to be evaluated for a liquidation workout option, the servicer must first evaluate the borrower for a liquidation workout option. D2-3.1-01, Determining the Appropriate Workout Option	

Additionally, Fannie Mae provides definitions of each workout type, and an entire section dedicated to CO-VID 19 options, along with non-retention options.

Freddie Mac

Freddie Mac, like Fannie Mae, has a loss mitigation evaluation hierarchy and performance standards. Please see the chart below[3]:

[3] Freddie Mac Loss Mitigation Evaluation Hierarchy, Effective July 1, 2020, https://guide.freddiemac.com/app/guide/section/9201.2

If a Borrower who is current or less than 31 days delinquent contacts the Servicer for loss mitigation assistance, the Servicer must first evaluate the Borrower for eligibility for a Freddie Mac Enhanced Relief Refinance® offering (refer to Chapter 4304). If the Borrower is not eligible for an Enhanced Relief Refinance Mortgage, then the Servicer must evaluate the Borrower for a reinstatement of relief option as set forth in Chapter 9203.

If a reinstatement or relief option as provided in Chapter 9203 is not appropriate based on Borrower circumstances, the Borrower may qualify for a workout option under the Guide. The Servicer must consider a Borrower for workout options in the following sequence:

1. The Servicer must first consider the Borrower for a Freddie Mac Flex Modification in accordance with the requirements of Chapter 9206
2. If a Borrower is ineligible for, does not accept, or fails to complete the Trial Period Plan, the Servicer must next consider the Borrower for a Freddie Mac Standard Short Sale ("short sale") pursuant to Chapter 9208
3. If a Borrower is ineligible for a short sale or a short sale is not viable option, the Servicer must next consider the Borrower for a Freddie Mac Standard Deed-in-Lieu of Foreclosure ("deed-in-lieu of foreclosure") in accordance with the requirements of Chapter 9209

When a Borrower becomes 90 days delinquent, or when a Borrower has a Step-Rate Mortgage and becomes 60 days delinquent within the 12 months following the first payment due date resulting from an interest rate adjustment, the Servicer must determine if the Borrower is eligible for a streamlined offer for a Flex Modification in accordance with Section 9206.5(c) and if eligible, solicit the Borrower for such modification in accordance with Section 9102.5(a).

If the Borrower's hardship is the result of an Eligible Disaster but the Borrower indicates he or she is able to resume making the existing contractual monthly payments on the Mortgage, the Servicer must evaluate the Borrower for a Capitalization and Extension Modification for Disaster Relief ("Disaster Relief Modification") as provided in Section 9206.4, if reinstatement or a repayment plan is not a viable option.

If the Borrower's hardship is one of the four listed below and the Borrower has indicated a desire to sell or vacate the property, the Servicer may consider the Borrower for a short sale without first evaluating the Borrower for a home retention option; however, the Servicer must ensure that the Borrower is aware that a home retention option may be possible:

- Death of a Borrower or death of the primary or secondary wage earner in the household
- Long-term or permanent disability; serious illness of a Borrower/co-Borrower or dependent family member
- Divorce or legal separation; separation of Borrower unrelated by marriage, civil union or similar domestic partnership under applicable law
- Distant employment transfer, including Permanent Change of Station orders or relocation due to new employment, where the transfer or new employment location is greater than 50 miles one-way from the Borrower's current Primary Residence

If the Borrower is not eligible for a relief or workout option, but the Servicer believes that a relief or workout option is still the best solution to the Delinquency, then the Servicer may submit a recommendation to Freddie Mac for review along with the reason for the recommendation, in accordance with the submission procedures in the relevant chapters for relief or workout options.

Additionally, Freddie Mac has a charge-off option available to cease collection and loss mitigation activities on a Mortgage, under certain conditions. (see Sections 9210.1 through 9210.5 for requirements related to the charge-off option.)

Federal Housing Administration (FHA)

FHA has five different sections on Loss Mitigation regarding Servicer requirements and review under the FHA Single Family Handbook 4000.1. The FHA requires the Mortgagee to evaluate monthly all loss mitigation options for borrowers in default if the mortgage remains delinquent. The focus will be on the HUD's Loss Mitigation Option Priority Waterfall. This applies to owner-occupant borrowers utilizing the process in the loss mitigation home retention option, to determine which, if any, home retention options are appropriate under HUD guidance.

Loss Mitigation Home Retention Waterfall Options

Step	Decision Point	Yes	No
1	Household or Borrower(s) has experienced a verified loss of income or increase in living expenses?	Step 2	Informal or Formal Forbearance/repayment plan workout tools
2	One or more Borrowers receive Continuous Income in the form of Employment (e.g., wages, salary, or self-employment earnings), Social Security, disability, veterans' benefits, Child Support, survivor benefits, and/or Pensions?	Step 3	Special Forbearance
3	Front-end ratio is at or less than 31%?	Step 4	FHA-HAMP (Step 5)
4	85% of surplus income is sufficient to cure arrears within 6 months?	Formal Forbearance/r	FHA-HAMP (Step 5)
5	**FHA-HAMP Loan Modification**[2] *(Requires Successful Completion of Trial Payment Plan)*		
	The use of an FHA-HAMP Option is to both alleviate the Borrower's burden of immediate repayment of arrears and to adjust monthly payments to a level sustainable by the household's current income. The FHA-HAMP Option may or may not include a Partial Claim. Partial Claim: the total amount available is the lesser of: (1) the unpaid principal balance as of the date of Default associated with the initial Partial Claim, if applicable, multiplied by 30%, less any previous Partial Claim(s) paid on this Mortgage; (2) if there are no previous Partial Claim(s), the unpaid principal balance as of the date of the current Default multiplied by 30% or (3) the total amount required to meet the target payment. The Partial Claim amount may include: arrearages; legal fees and foreclosure costs related to a canceled foreclosure action; and principal deferment (per below calculation). No portion of the Partial Claim may be used to bring the modified Mortgage Payment below the target payment. Loan Modification: 1. Calculate the target total Mortgage Payment: A. Calculate 30% of gross income B. Calculate 80% of current total Mortgage Payment C. Calculate 25% of gross income D. Take the greater of B and C E. Take the lesser of A and D 2. Calculate total Mortgage Payment on the total outstanding debt to be resolved at the market interest rate[3] and 360months' term. 3. If the result of Step 2 is at or below the result from Step 1E, then the Borrower is eligible for an FHA-HAMP Standalone Loan Modification only at the market interest rate; otherwise go to Step 4. 4. Calculate amount required to meet target payment. A. Reduce loan balance used in Step 2 until calculated Mortgage Payment reaches target amount from Step 1 or else the maximum allowable deferment is reached per amount available as calculated above per instructions in the "Partial Claim" section. B. If the final Mortgage Payment is greater than 40% of current income, and the unemployment status is verifiable, then the Borrower is eligible for a reduced payment option under the Special Forbearance. C. If there is no verifiable unemployment status and the Borrower has already been reviewed for retention options under the waterfall but does not qualify for any (i.e., the Borrower does not have sufficient surplus income or other assets that could repay the indebtedness), then the Borrower is eligible for FHA's non-retention options.		

As mentioned, FHA has five sections on loss mitigation, including a new addition and expansion as it relates to Presidentially Declared Major Disaster Areas (PDMA) options, and COVID-19 Home Retention Options.

Veteran's Administration (VA)

The Servicer Handbook, Chapter 5, covers Loss Mitigation requirements for Servicers. For the VA home retention option, the handbook states, "the home retention option should not be approved unless it is within the borrower's financial ability to reinstate the delinquency."[4]

Home Retention Options include:

- Repayment plan
- Special forbearance
- Loan modification

Additionally, the VA has also announced additional programs considering COVID-19 and the Cares Act[5].

USDA Rural Development (USDA)

For the Single-Family Housing Guaranteed Loan Program, there is a Loss Mitigation Servicer User Guide for Servicers to utilize and review Borrowers for Loss Mitigation[6]. Additionally, in Chapter 18 of the online program Handbook, there is an entire section on loss mitigation[7]. "The servicer must attempt to obtain information on the borrower's financial condition and make an informed determination of the borrower's ability to repay the arrearage and continue making mortgage payments as scheduled. Details on consideration and processing of the below actions are located in the Attachment 18-A, Loss Mitigation Guide"[8]:

Loss Mitigation Guide

- Servicing early delinquent loans
- Informal repayment agreement
- Loss mitigation overview
- General policies, procedures, and minimum actions that constitute effective loss mitigation techniques
- Special forbearance
- Traditional loan modification
- Special loan servicing options
- Pre-foreclosure sale
- Deed-in-lieu of foreclosure

[4]VA Servicer Handbook M26-4, Chapter 5, Loss Mitigation, https://www.benefits.va.gov/WARMS/M26_4.asp

[5]VA Circulars, https://www.benefits.va.gov/HOMELOANS/resources_circulars.asp

[6]USDA Linc Training & Resource Library, https://www.rd.usda.gov/page/usda-linc-training-resource-library

[7]HB-1-3555 SFH Guaranteed Loan Program Technical Handbook, https://www.rd.usda.gov/sites/default/files/3555-1chapter18.pdf

[8]HB-1-3555 SFH Guaranteed Loan Program Technical Handbook, https://www.rd.usda.gov/sites/default/files/3555-1chapter18.pdf

- Servicing plan, checklists, and disposition cost-benefit analysis
- Reporting – ESR and status of mortgage codes

Attachment 18-A referenced above

Disposition (PFS/DIL) Cost Benefit Analysis (Example)

This worksheet is being provided to demonstrate cost savings to Government, as described under 7 CFR 3555.305. Voluntary liquidation methods must demonstrate the expected cos to the Government to be the same as or less than the cost of foreclosure. Other methods of liquidation must demonstrate how the proposal will result in savings to the Government. These options are appropriate for borrowers who have experienced a verified, involuntary inability to meet their mortgage obligation. Borrowers that have abandoned their mortgage obligation or strategically defaulted may not be eligible. For further eligibility clarification, please refer to the “Loss Mitigation Guide” Failure to comply with Agency Regulation, Policies and Guidance may result in a reduction or denial of any future Loss Claim. If you need further assistance, please contact the Customer Servicing Center at 1-866-550-5887.

Voluntary/Other Liquidation Method		**Foreclosure Method**	
Current Market Value	$180,000.00	Current Market Value	$180,000.00
[1]Gross Sales Price	$172,500.00	[1]Estimated Liquidation Value	$151,200.00
[2]Net Sales Proceeds	$157,482.63		
[3]Actual Net Sales Price %	91.294%		
Unpaid Principal Balance	$203,325.62	Unpaid Principal Balance	$203,325.62
Interest to Settlement Date	$5,622.79	Interest to FC Sale Date	$6,401.16
Escrow Shortage	$900.00	Escrow Shortage	$1,100.00
FC Cost	$1,513.25	FC Cost	$2,731.55
Other Cost	$129.13	Other Cost	$129.13
Total Debit	**$211,499.79**	[2]Estimated REO Marketing Cost	$22,604.40
Less Net Sales Proceeds	$157,482.63	**Total Debit**	**$236,291.86**
Total Estimated Less Claim	**$54,008.16**	Less Estimated Liquidation Value	$151,200.00
		Total Estimated Less Claim	**$85,091.86**

Voluntary/Other Liquidation Method notes:

[1]If no offer is available enter Market Value in lieu of Gross Sales Price.
[2]If no offer is available reduce Market Value by Management Acquisition Factor (14.95%) and enter in lieu of Net Sales Proceeds.
[3]The result of the Net Sales Price divided by the Current Market Value.

Foreclosure Method notes:

[1]Equal to 84% of the Current Market Value
[2]Multiply Estimated Liquidation Value by Management Acquisition Factor (14.95%)

Cost Savings to the Government: $31,083.70

Florida Foreclosure Mediation

During the financial crisis of 2009 in the United States, Florida experienced one of the highest rates and highest numbers of residential foreclosures in the country. Four states accounted for more than 50 percent of the nation's 2009 total, with more than 1.4 million properties receiving a foreclosure filing in California, Florida, Arizona, and Illinois combined. Florida posted the nation's second-largest total, after California, with 516,711 properties being foreclosed in 2009, in court filings, as Florida is a judicial state, a 34 percent increase from 2008.[9]

Florida Task Force on Residential Mortgage Foreclosure Crisis, March 27, 2009

On March 27, 2009, Florida Supreme Court Justice Peggy A. Quince established a 15 member Task Force on Residential Mortgage Foreclosure Crisis to recommend strategies for "…easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties." The task force focused on mediation and other alternative dispute resolutions (ADR), with a deadline of August 15, 2009, for a final report. Stakeholders from various industry groups, including judges, plaintiffs, and defense counsel, and ADR specialists comprised the task force.[10]

In their Interim Report dated May 8, 2009, the task force noted that Florida foreclosure court filings increased from 74,000 cases in 2006 to 370,000 in 2008, an increase of 400%, without an increase in court infrastructure. Some of Florida's 20 judicial circuits had higher increases: 20th circuit, in southwest Florida, saw a 788% increase from 2006 to 2008, and the 12th circuit, in central west Florida, saw a 631% increase. The task force sounded an alarm about the increasing foreclosure rate in Florida and favored a uniform, statewide response, once the court system had jurisdiction.[11]

The introduction to the task force's final report dated August 17, 2009, began as follows:

> Picture this: the biggest road out of town. Imagine it is rush hour. In a thunderstorm. Add that it is also a hurricane evacuation. A lane is closed due to construction delayed by budget impacts. Imagine the traffic jam.

The clearest description of the impact of the foreclosure crisis and the following recession on Florida's courts can be summarized by that picture. Imagine every car is a case. The General Jurisdiction Courts of our state have a certain amount of judicial infrastructure, just like there is a certain amount of room on the road. There is a certain capacity of judges, of court staff, of clerks, of filing space, of hearing time, of courtrooms, even of hours in the day. Year in, year out, that capacity flexes with the caseload traffic to afford reasonable, prompt, efficient, and fair justice.

This is very vivid imagery in the state of Florida, and the task force wanted to emphasize the very real revenue crisis in the Florida court system which was being flooded by the foreclosure crisis.

[9] https://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2010-01-14%20RealtyTrac%20Year-End%20Report%20Shows%20Record%202.8%20Million%20US%20Properties%20with%20Foreclosure%20Filing.pdf

[10] https://www.floridasupremecourt.org/content/download/240707/file/AOSC09-8.pdf

[11] https://www.floridasupremecourt.org/content/download/242887/file/05-08-2009_Foreclosure_TaskForce_Interim_Report.pdf

Their recommendations reflected the lack of state revenue available to increase system capacity, including additional staffing. The task force too lacked funding for in-person meetings, so reminiscent of pandemic remote meetings, met a total of 50-75 hours over four months in mostly telephonic and video conference meetings.[12]

The task force recommended the adoption of a uniform, statewide managed mediation program, including the following:

- A model administrative order issued by each circuit chief judge which includes:
    - o Referral of the borrower to foreclosure counseling before mediation.
    - o An early exchange of borrower and lender information by way of an information technology platform before mediation.
    - o Allowing the plaintiff's representative to appear telephonically, but borrowers and plaintiffs' counsel appear in person.
    - o Borrowers not required to pay a fee to participate, expense borne by plaintiffs.
- All residential homestead property foreclosure cases will be referred to mediation, unless parties agree otherwise, or unless pre-suit mediation is conducted.
- Conducted by a Florida Supreme Court certified circuit court mediator.
- Vacant and abandoned properties not included but instead, foreclosure can be expedited.
- Tenant occupied properties can opt-in.
- Model forms provided too.

The task force heard from and documented feedback from a variety of stakeholders: plaintiffs' firms, defense firms, servicers, and consumer legal services groups, as well as reviewed scholarly articles about the foreclosure court crisis. The stakeholders often were at odds with one another, but the task force identified what they saw as the main issue: lack of effective communication early in the legal process.

The most critical case management issue in the foreclosure crisis is the severe and significant communication issues which are impeding early resolution of foreclosure cases. The plaintiffs complain of being ignored by borrowers despite multiple efforts and outreach, the borrowers complain of being unable to get through to loss mitigation departments, being asked to send and resend the same financial information repeatedly and being unable to get a decision on their case.[13]

Florida Supreme Court Order dated December 28, 2009, Mandates Residential Foreclosure Mediations

On December 28, 2009, Florida Supreme Court Justice Peggy A. Quince signed the order requiring mediation in residential foreclosure cases, which traced the recommendations from the Task Force. The 105-page order contained 95 pages of guidelines and template forms to use with the mediation program. Fees, paid by plaintiffs, were set at $750.00 per mediation, with $400.00 paid upfront for administration costs, and then $350.00 paid for the mediator at the time of mediation.[14]

[12] https://www.floridasupremecourt.org/content/download/242871/file/Filed_08-17-2009_Foreclosure_Final_Report.pdf

[13] Id, page 28.

[14] https://www.floridasupremecourt.org/content/download/242863/file/AOSC09-54_Foreclosures.pdf

The mediation process was as follows:

- Form A- homestead, TILA loan, representative, and borrower contact information are filed with the foreclosure complaint.
- Notice of available mediation is attached to the summons which is served on borrowers.
- Mediation programs that are established in each circuit affirmatively reach out to borrowers to set the mediation.
- A $400 nonrefundable fee paid by the plaintiff at the time of filing the case.
- Mediation must be completed within 120 days of filing the case.
- Upon borrower request, the plaintiff must disclose owner and holder of mortgage and note, payment of history, the net present value of the loan- modified cash flow vs. foreclosure costs, most recent appraisal.
- Borrowers are required to receive HUD counseling, provide HAMP-type financials and desired outcome.

A year later—December 28, 2010

On December 28, 2010, exactly a year after the order implementing the program, a Mortgage Foreclosure Subcommittee established by the order tracked the progress of the mediation programs and issued a report on the program's efficacy. As of July 1, 2010, six months after the start of the program, only seven of Florida's twenty circuits were able to collect data.

This subcommittee focused on a couple of data points: how timely was the outreach to borrowers to determine whether they want to participate in mediation; what were borrowers' responses once they were contacted; and what did the written settlements say about effective outcomes?

The Mortgage Foreclosure Subcommittee provided some limited statistics, again, from seven of twenty circuits who had reporting capabilities, which showed that less than half of eligible cases participated in the program, less than half of the eligible borrowers were contacted, and almost two-thirds of the mediations did not result in written settlements.[15]

Almost two years later—September 26, 2011

On September 26, 2011, Florida Supreme Court Justice Charles T. Canady appointed a six-person Statewide Managed Mediation Program Assessment Workgroup to evaluate the efficacy of the managed residential foreclosure mediation program, noting that "…the program was intended to be a temporary response to an emergency arising from an extreme and unprecedented number of foreclosure filings in the circuit courts."[16]

The workgroup issued a report on October 21, 2011, after reviewing data and comments from stakeholders, recommended eliminating the mandate for a statewide managed mediation program and allow the individual circuits to opt in to a new, revised uniform model administrative order.

[15] https://www.floridasupremecourt.org/content/download/242861/file/12-28-2010_Foreclosure_Mediation_Report_1.pdf

[16] https://www.floridasupremecourt.org/content/download/240820/file/AOSC11-33.pdf

The workgroup recommended that the following changes be made to the model order issued on December 28, 2009:

- Require borrowers to opt into the program at the time of service of process.
- Improve the integrity of borrowers' financial information and lenders' contact information.
- Improve document exchange and document review performance and requirements.
- Determine how the correlation between bankruptcy and the program.
- Implement sanctions for noncompliance.
- Explore borrower contributions to fee.
- Shorten timeline for completion of the mediation.
- Track post-mediation settlements.

Interestingly, though the workgroup recommended eliminating mandatory mediation, they noted evidence indicating plaintiffs/servicers "…resisted providing representatives at mediation with full settlement authority to settle and refused to consider more than a narrow range of settlement options, most of which were of little value to borrowers. Servicers had economic incentives not to settle and to keep foreclosure cases in limbo to avoid the expenses that accompany homeownership."17

End of the Florida Residential Foreclosure Managed Mediation Program, December 19, 2011

Florida Supreme Court Chief Justice Charles T. Canady, in a two-page order, without any explanation other than to say that the Court reviewed reports and cannot justify the continuation, terminated the program.18

The Foreclosure Initiative Workgroup issued another report on April 10, 2013, which was followed by an Order issued on June 21, 2013, by Florida Supreme County Chief Justice Ricky Polston directing each of Florida's chief judge in the twenty judicial circuits establish a case management plan to resolve foreclosure cases and that clerks and courts continue to compile data regarding foreclosure cases.19

Contrast with U.S. Bankruptcy Court Mortgage Modification Mediation (MMM) Program—U.S. Bankruptcy Court, Northern, Southern, and Central District of Florida

In contrast, the MMM program is not a mandatory mediation but is a program established by many bankruptcy courts which creates a set of procedures for qualifying debtors to begin a mediation process with their mortgage lenders for a loan modification. The lender can also initiate the mediation. Neither party is obligated to reach an agreement, though good-faith negotiation is required.

[17] https://www.floridasupremecourt.org/content/download/242860/file/10-21-2011_Workgroup_Final_Report.pdf

[18] https://www.floridasupremecourt.org/content/download/242858/file/12-19-2011_Order_Managed_Mediation.pdf

[19] https://www.floridasupremecourt.org/content/download/242859/file/04-10-2013_Foreclosure_Report.pdf; https://www.floridasupremecourt.org/content/download/240924/file/AOSC13-28.pdf

While each court has adopted slightly different procedures for its MMM program, the basics are the same:

- Chapter 13 debtor or lender petitions the court for MMM, debtors usually required to dedicate 31% of their gross income to a modified mortgage (or, for some, 75%-100% of the current monthly mortgage payment.)
- Each party pays an amount (typically between $200-$400) for the mediation fees and agrees to split any additional costs evenly.
- The modification agreement is then approved by the court.

The U.S. Bankruptcy Court for the Middle District of Florida implemented its MMM program on February 1, 2013, and continues to improve the program, with the latest process found online here.

The Northern and Southern Districts of Florida soon followed and established their own MMM programs. The MMM programs have been expanding to other bankruptcy districts and are effective enough to maintain the programs, in contract with Florida's program. Why the difference?

By virtue of filing a bankruptcy case, borrowers have some tools not available in state court, namely, the automatic stay which gives time without the threat of an ongoing foreclosure case; the ability to strip off unsecured junior mortgages in Chapter 13 cases; and discharging substantial amounts of credit card, medical, and other unsecured debts in bankruptcy that allow better cash flow for a modification.[20]

Contrasted with the Florida program, rather than requiring an initial outreach to borrowers and mandatory payment of a $400.00 fee by plaintiffs, the bankruptcy MMM program is initiated by either party, which then triggers adherence to certain requirements. MMM programs have been in place for several years and the antidotal feedback for stakeholders is that it works and is worth keeping, albeit with modifications as needed.

With the next financial crisis looming over student loan debt, the Middle District of Florida implemented a Student Loan Management Program which operates similarly to the MMM program. With a looming financial crisis connected with the COVID-19 pandemic, all stakeholders are evaluating and anticipating the implementation of loss mitigation programs. Might the Florida and bankruptcy mediation models hold value for pandemic workouts? It appears that the MMM model, which is ongoing, could be adapted to assist with the resolution of pandemic related bankruptcy filings.

What is Mortgage Modification Mediation?

Mortgage Modification Mediation, more commonly known as "MMM," is a court-ordered and supervised loss mitigation program that takes place via the bankruptcy court. Typically, the process begins with the debtor filing a motion for referral to mortgage modification mediation and the bankruptcy court entering an order directing the parties to mediation. Depending on the jurisdiction, this process is available in Chapter 13, 11, and "7".

[20] https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1334&context=cl_pubs

Why is MMM Successful?

On average, the MMM program has a 75% success rate. The main attribution to the high success rate has to do with the fact that the parties communicate via a secure portal. For instance, once the MMM order is entered, counsel for the debtor, counsel for the lender, the lender, and the mediator register on a secure portal. All communications, including document submission, must be via this portal, thus avoiding crucial documents and communications being delayed (or not arriving) via the mail as well as documents going stale. For example, if the lender notices that the RMA is not filled out properly, the lender may send a quick message in the portal advising the same. This message is transmitted to all parties, as well as the mediator. The same applies if the lender needs further documentation to clarify any discrepancies in the application.

Mediation conferences also lead to success. Depending on the jurisdiction, most MMM orders provide for a maximum of two (2) one (1) hour mediation conferences. The parties also split the cost of the mediation, including the mediator's fee, which is set by the court. It is not uncommon for a mediation to be held before a decision on the loan modification being reached. This typically occurs if there are issues in the loan application and or discrepancies that cannot be resolved via messages. It is helpful when all parties are together (via remote means) and able to discuss and work to resolve the issues.

Moreover, in the event of loan medication denial, a mediation after a denial letter may result in a loan modification. This is because the lender will be able to explain the reason for the denial. Most often either the debtor's counsel or the mediator will ask the lender representative what is needed for the debtor to qualify for a modification. This could be either showing an increased income (i.e. contribution income from other family members) or even a simple letter of explanation that can be sent to the underwriters. Sometimes a modification is simply not feasible either due to lack of income, investor requirements, or other factors that may not be known to the debtor. A mediation conference may be used to explain these reasons, thereby diminishing any false hope the debtor may have in the future regarding loss mitigation.

The final reason MMM is successful has to do with the good faith requirement. Most orders require that all parties participate and mediate in good faith. This means that the debtor must submit all documents promptly, the lender must timely review and notify the debtor of any missing documents, and all parties must respond to messages and requests on time. In the event either party is not adhering to the terms of the order, the other party may file a Motion to Compel Compliance or a Motion to Vacate. In either case, the matter then goes before the bankruptcy judge assigned to the case who will issue a ruling—sometimes in the form of a sanctions order against the lender or vacating the MMM order if the at-fault party is the debtor.

Basic MMM Fundamentals

There are several uniform requirements of the MMM program, although some may vary from jurisdiction to jurisdiction. They are as follows:

- The debtor is required to provide adequate protection payments to the lender. These payments are either 31% of the gross monthly income (if homestead property) or 75% of the rental proceeds (if investment property.)
- The parties are required to split the mediator's fee. The fee ranges from $500.00 to $600.00 depending on the jurisdiction. This fee usually includes two (2) mediations.
- Parties are required to mediate in good faith, including timely submitting documents.
- In the event the mediation results in an impasse, the Debtor is required to amend/modify the plan to either conform to the proof of claim or treat the property outside.

For more information about this report or on becoming a Legal League 100 member, please contact:

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