

Foreclosure Fairness Act



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Foreclosure Fairness Act

- Took effect July 22, 2011, owner-occupied only
- Guarantees homeowners the right to a face to face meeting with their lender
- Guarantees many homeowners a mediation with their lender, if that becomes necessary
- Requires the homeowner to respond to a letter from their mortgage lender
- If the homeowner does not respond before a deadline, the homeowner LOSES these rights!



Phone Calls to Homeowner

In addition to NOPFO letter, lender must call borrower at least three times, three different days at different times.



Call Lender

The Homeowner must contact their lender within thirty days from the date of the letter.



HUD Counselor

Next phone call should be to
the HUD Counseling office

877.894.HOME (4663)



Non-Judicial Foreclosure Process Prior to July 22, 2011

- Letter to Borrower – in default, call lender
- 30 days later – notice of default
- 30 days later – notice of trustee sale
- 90 days later – trustee sale
- 150 days (minimum) from 1st contact to foreclosure sale



Non-Judicial Foreclosure Process Under FFA

- NOPFO Letter + borrower calls lender
- 90 days later – notice of default
- 30 days later – notice of trustee sale
- 90 days later – trustee sale
- 210 days (minimum) from 1st contact to foreclosure sale



Washington Homeownership Information Hotline

877.894.HOME (4663)



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No Call to Lender?

If homeowner does not contact lender within 30 days of date of letter, foreclosure proceeds at end of 30 days.



Face to Face Meeting

- Guaranteed if borrower calls lender w/in 30 days
- Local lender representative must be present
- Decision maker must be available by phone or video conference



Face to Face Meeting

- Loan Modification
- Short Sale Negotiation
- Deed in lieu of foreclosure
- Forbearance
- Other individualized options



Foreclosure Started Prior to 7/22?

Homeowner should contact
housing counselor
immediately

877.894.HOME (4663)



Warn Homeowners to avoid anyone who:

- Guarantees they can “save your home”
- Collects a fee before providing any services
- Tells you not to contact your lender, attorney, or housing counselor
- Tells you to make your mortgage payments directly to them
- Pressures you to sign paperwork



Mediation

- Some borrowers entitled to mediation.
- Housing Counselor or Lawyer must refer to mediation.
- Only available if lender not “exempt”
 - Less than 250 trustee sales last year
- Exempt Lenders: www.commerce.wa.gov



Mediation

- Department of Commerce appoints mediator
- Counselor or lawyer may attend with borrower
- Mediator can find bad faith by either party = consequences!



Scheduling and Attendance

- Mediation must occur no more than 45 days after selecting mediator – in County
- Mediator notifies parties at least 15 days prior to mediation
- Attendees:
 - Homeowner/borrower
 - Attorney, housing counselor or advocate for homeowner
 - Bank representative
 - Decision maker – *bank must have someone participate who can do something*



Documents to Mediator

- Mediator identifies documents required from both parties, in advance of mediation
- Vital that all documents provided to mediator. Failure may result in mediator finding bad faith.



At the Mediation: Procedure

- Initial meeting and opening statements by parties and mediator
- Parties probably negotiate in same room
- Fee/duration: Up to \$400 (shared equally) and up to 3 hours of mediation time



At the Mediation: Certification

- Parties create terms, resolve issues, set forth plan/next actions:
 - Loan modification
 - Short sale
 - Deed-in-lieu
 - Other
- Mediator certifies mediation within 7 days, and provides FFA Certification to Department of Commerce



Mediator's Role and Authority

- Encourage examining of options (modification, short sale, etc.). Considerations:
 - *Borrower's economic circumstances*
 - *Net present value of modified loan vs. anticipated recovery at foreclosure by bank*
 - *Established by FDIC, or other federal tools/programs*
- Encourages parties to speak openly and gain understanding regarding borrower's situation
- Encourages bank to be flexible and borrower to honor agreements/commitments made at mediation



Good vs. Bad Faith

- Mediator determines whether party acted in bad faith
- Bad Faith:
 - Failure to participate in mediation
 - Failure to timely share required information
 - Failure to pay party's share of mediation fee
 - Failure to send authorized representative to mediation
 - Request by lender for borrower to waive all future claims



Conclusion of Mediation

- Homeowner can enjoin foreclosure if:
 - Present net value of modified loan is greater than anticipated proceeds from trustee sale
 - Bad faith acts by bank
- Certification: Mediator will establish the terms of the resolution between the parties and provide Foreclosure Fairness Act Certification to the Department of Commerce



Short Sales



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Compensating SS Negotiator

- Paid by lender
- Up front retainer, if negotiator is a lawyer and then, retainer must be held until house sells (MARS)
- RE commission, if negotiator is a RE broker (DFI)
- Compensation paid by buyer or other
- Other



SS Negotiator Must Have:

- Washington law license
- Washington RE broker's license, or
- Washington loan originator's license



Hiring Short Sale Negotiator?

- Terms of Compensation
- License
- Experience



Short Sale Process

1. List home
2. Market value: be prepared to lower price systematically
- 3. Find a buyer**
4. Hire SS Negotiator (if not already done)



Short Sale Process

5. Packet submission, BPO request
 - Key to process, be proactive
6. Negotiation and follow-up
 - Establish contact procedures
7. Approval and closing



Lender Negotiation Sticking Points

- BPO
- Satisfy buyer concessions
- Satisfy junior lien holders
- No liability for deficiency



Conditional Approval

Advise review by legal
counsel (in writing!)



Changing Short Sale Landscape

- OCC Consent decree
 - Single point of contact
- FFA mediation
 - Bank must provide decision-maker



Consumer Video

You don't have to remember all of this . . .

Share a bucket of popcorn and the Washington REALTORS video with your client

