

MBA's 97th ANNUAL
CONVENTION & EXPO
OCTOBER 24-27 ATLANTA

FORECLOSURE MEDIATION
Issues and Solutions

2010

MAKING STATE FORECLOSURE MEDIATION WORK

MBA's 97th ANNUAL
CONVENTION & EXPO
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Philadelphia Mortgage Foreclosure Diversion Program Holistic approach

- **Involve all stakeholders - *relationship building/community banking***
 - Homeowners
 - Housing Counselors/HUD Approved/Non-Profit
 - Lenders
 - Lenders' counsel
 - State and municipal agencies
 - Pro bono attorneys and “judges”- JPT
 - Court and Court Professionals
 - Community Activists and Groups
 - Consumer Advocates

- Graceful exit is a viable option
- Key role of Housing Counselors
- Education about role of servicers and limitations
- Delay for sake of delay is bad policy
- Owner occupied properties only
- Focus on expediting vacant property foreclosures
- Case management tool
- Conciliation, not mediation
- No blame game - focus on loan resolution not litigation
- Protection of Contractual Rights
- Social services for homeowners
- Report Rescue Scams to US Attorney Task Force
- Report Attorneys to Disciplinary Board

**City Hall Room 676
Every Thursday, 9am and 1pm**



Not your ordinary Courtroom Experience

ABC Nightline - December 9, 2009



PHILADELPHIA PROGRAM HIGHLIGHTS

- Creation of Mortgage Foreclosure Steering Committee in 2004
- Return to Community Banking
- Promote effective communication among homeowners, lenders, lender's counsel and housing counselors.
- Created a list of contact information for lenders and their law firms which was distributed to housing counselors and advocates for homeowners.

PHILADELPHIA PROGRAM HIGHLIGHTS

- Established a centralized hotline number for Philadelphia County.
- The hotline connects the homeowner with a housing counselor and sets up an initial meeting with the housing counselor.
- Notice
 - Requires the lender, upon the filing of its Complaint in Mortgage Foreclosure, to include the contact information for lender and law firm home retention units; and
 - Court Order setting the initial Conciliation (usually no more than 60-90 days from Complaint filing date).

COMMUNITY OUTREACH

- Public Service Announcements
- Door to door solicitation by community groups encouraging participation- “Brother can I borrow your cell phone?”

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PHILADELPHIA PROGRAM HIGHLIGHTS

- The homeowner must prepare and submit a completed Hope Now workout package ten days *prior* to the Conciliation.
- Lender is permitted to exercise all legal rights, but may not enter judgment or schedule a sheriff's sale.
- If homeowner does not appear or fails to provide financial documentation, the lender may proceed without further delay.
- Pro-bono attorneys or other legal resources and housing counselors trained and made available to homeowners.

PHILADELPHIA PROGRAM HIGHLIGHTS

Future Development:

- Two tier approach – initial hearing to remove non-responsive homeowners from the program.
- Strict adherence to document submission timelines.
- Three (3) or more conciliations required to go to JPT.
- Lenders are permitted to request a conference in cases where a conference may assist the case to completion. (Litigation Cases).
- Expedite foreclosures in cases of abandonment, vacancy, nuisance or non-owner occupied situations.

PHILADELPHIA PROGRAM HIGHLIGHTS

- Provides an opportunity for the homeowner and the lender to effectively communicate under the Court's jurisdiction, within a time frame that does not substantially impact the lender's legal and contractual rights.
- Leave the blame game outside the Courtroom door.
- Creation of a process that provides assistance to the borrower in financial distress.
- Recognizes that the financial stress also creates other issues – referral to appropriate social service agencies.

PHILADELPHIA PROGRAM HIGHLIGHTS

- Delays equal losses to the Lender, the borrower and the Community.
- Avoid program intervention that would involve the Courts in examining “lifestyle” choices made by homeowners: where they shop, what they spend, how hard they work. Is this an appropriate role for the Courts?
- Consider an absolute sunset provision based on the number of filings per period.
- The lender has less flexibility in cases of unemployment of the homeowner, home price declines or when the interest rate is fixed and reasonable.
- Program should monitor excessive delays and hearings so that homeowners do not use them to avoid their legal obligations.

CONDUCT OF THE CONFERENCE

- Informal discussion is favored over a formal hearing.
- Allow the legal representative of the lender to appear at the Conciliation/Mediation Conference.
- Plaintiff/Lender representative with Settlement Authority may be ordered to appear at any subsequent Conciliation/Mediation Conference if such action is deemed warranted by the Court to facilitate resolution.

LEGAL CONCERNS

- Mediators and judges cannot force contract modifications as such may violate both the US and state constitutions.
- Taking of private property for Public Use?
- The original contract was freely negotiated, how to modify a contract that recognizes changed circumstances.
- Alternative to foreclosure litigation not to be used to litigate the merits of a parties' position.
- Substantial legal defenses to the Action of Mortgage Foreclosure; homeowner encouraged to seek the assistance of competent legal counsel to advise them.
- What about heirs and legal guardians?

LENDERS' CONCERNS

- The lender requires 30-45 days from submission of a completed loan resolution package until they have reached a decision.
- Postpone conferences for a period of time consistent with decision making process.
- Lenders require continuing dialogue with the homeowner or housing counselor for clarification regarding specific and unique issues.

POTENTIAL BENEFIT TO LENDERS

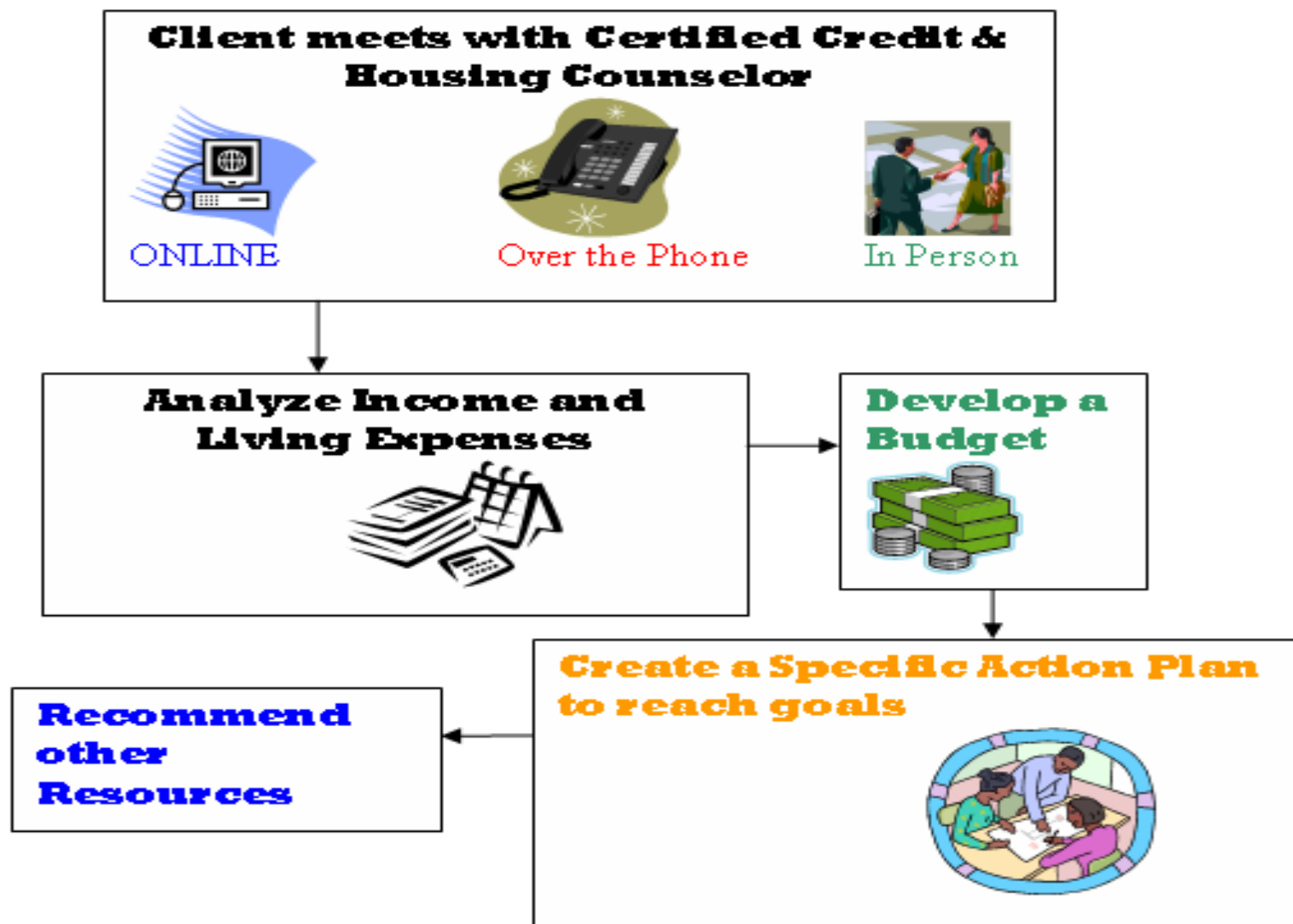
- Relief valve for courts, public officials, homeowners and lenders.
- Provides a systemic and comprehensive structure for communication.
- Promotes more predictability and uniformity of results. Reduction of litigated or contested foreclosure cases.
- Avoids wholesale delay caused by blanket moratoria or judicial or other governmental action.
- Promotes development of “fast track” foreclosure process in states that have a lengthy process at present.
- Housing Counselors provide a level of professionalism and a consistent point of contact.
- Strengthens community ties.

**CONSUMER CREDIT COUNSELING SERVICE OF
DELWARE VALLEY**

- National Leader in housing, credit and financial education with strong regional focus
- Non-profit, with 44 years experience
- Nineteen offices in southeastern PA and southern NJ
 - Philadelphia, Montgomery, Bucks, Chester and Delaware Counties
 - Camden, Burlington, Gloucester & Salem counties
- Provide one-on-one counseling
- Financial Education Workshops

IN EACH COUNSELING SESSION...

- Client connected to Counselor
- Realistic budget developed & reviewed for opportunities to reduce expenses/increase income
- Counselor begins negotiations with the lender/servicer.
- The counselor completes a diversion proposal with the client's financials and submits it to the lender's attorney's office



PHILA MORTGAGE FORECLOSURE DIVERSION COURT

- Counseling agency reviews court docket and reviews status of submitted proposals working with the client and lender's attorney.
 - No decision by the lender, the conference postponed
 - Proposal is developed & accepted, one final meeting in court to review agreement and return documents
 - Proposal is denied, counselor obtains reason for denial – possibility of a JPT conference

DIVERSION COURT COUNSELING SUCCESS

- Since 2008, CCCSDV has represented 981 clients in Philadelphia Diversion
 - 517 have received workout agreements with servicers
 - 340 are still in process
 - 124 have utilized short sale, deed in lieu of foreclosure or gone to sheriff's sale
- Each client appears in court an average of 2.4 times
- For successful negotiations, monthly payments have decreased by an average of 21.9%, with an average new interest rate of 4.45%

VALERIE

- Valerie attended conciliation in May 2010.
- The client was originally denied a modification
- Counselor requested and reviewed bank statement
- After working with the client and the lender , a repayment plan was approved.
- The client will be reviewed for modification in February 2011.

WHAT'S WORKING?

- Face-to-face interaction
- Consistent points of contact
- Housing counselors' experience
- Client involvement-representation at conciliation

CHALLENGES / OPPORTUNITIES

- Funding
- Client Fees
- Communication
- Client paperwork
- Trial modifications

DELAWARE COUNTY, PA DIVERSION PROGRAM

- Opt In to counseling
- 30 day stay once client opts-in
- Educates clients on available options

DELAWARE COUNTY, PA DIVERSION PROGRAM CHALLENGES & OPPORTUNITIES

- 30 day stay starts with client's call to counseling agency
- Loss mitigation is worked directly through the lender
- Stay is not always followed
- Clients confusion around responsibilities

NEW JERSEY MEDIATION HIGHLIGHTS

- Administered by NJHMFA
- Client meet face-to-face with lender's representative to work out mortgage delinquency issues
- Stay on pending sheriff's sale when mediation date scheduled by court
- Each client has the opportunity to be represented by an attorney appointed by NJHMFA & a housing counselor

NEW JERSEY CHALLENGES/OPPORTUNITIES

- Timeframe for the Mediations
- Lender's attorneys insist on new documents two weeks before mediation
- Multiple hearings due to lack of response by lenders

SERVICER PERSPECTIVE ON MEDIATION PROGRAMS *BENEFITS, CHALLENGES, AND OBSERVATIONS*

- **Benefits** - Mediation programs offer a forum for borrowers and servicers to explore alternatives to foreclosure, which is a goal shared by all.
 - Explore the full range of home retention solutions as well as dignified transition alternatives for those who cannot or do not want to keep their homes.

SERVICER PERSPECTIVE ON MEDIATION PROGRAMS *BENEFITS, CHALLENGES, AND OBSERVATIONS*

- **Challenges** – Mediation programs suffer due to a lack of consistency, unreasonable expectations, and design flaws.
 - To date no two programs are alike, making it extremely difficult for servicers to develop systems and processes that promote efficiencies. Trial and error approach is not working in many cases.
 - Mediators are often not familiar with current loan modification programs and other workout solutions and some may have conflicts.
 - Expecting a representative of the servicer to have “full settlement authority” may not be feasible.

SERVICER PERSPECTIVE ON MEDIATION PROGRAMS *BENEFITS, CHALLENGES, AND OBSERVATIONS*

- **Challenges** – continued.
 - Most mediation programs require consideration of individual borrower but few, if any, recognize unique differences between servicers or loan types.
 - Poorly designed programs create barriers, invite abuse, and consume resources that could be better used assisting other borrowers.
 - Proponents continue to use terms like “hammer,” “forced solution” and “sanctions” when discussing the value of mediations suggestion the ultimate goal is more punitive than collaborative.
 - Little or no reliable performance metrics to demonstrate what is or is not working.

SERVICER PERSPECTIVE ON MEDIATION PROGRAMS *BENEFITS, CHALLENGES, AND OBSERVATIONS*

- **Observations** – A model or multiple models might help achieve a degree of consistency and lead to the development of programs that are efficient and more likely to achieve the desired goals. Key features might include:
 - Mediator training
 - Communication tools to support the process
 - Notice to borrower
 - Borrower opt-in
 - Timing -- flexible scheduling and volume control
 - Pre-mediation document exchange
 - Phone conferences for parties where appropriate
 - Encouraging pre-mediation resolution
 - Eliminating barriers such as loan document production and appraisals
 - Weed out abuse

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