



Michigan Foreclosure Task Force

June 22, 2010

The Honorable Dan Scripps
Chairman, Housing Banking Committee
Anderson House Office Building, Room S-1385
Lansing, MI 48909

The Honorable Randy Richardville
Chairman, Senate Banking Committee
Farnum Building, Room 205
Lansing, MI 48909

Re: Joint House and Senate Banking Committee Hearing on Foreclosure Prevention and Michigan's 90-Day Workout Program for Homeowners, A Review of Public Acts 29, 30, 31 of 2009

Dear Chairmen Scripps and Richardville:

On behalf of the Michigan Foreclosure Task Force and the over 400 individual and 250 organizations that are part of the Task Force, let me commend you for holding hearings on Foreclosure Prevention and Michigan's 90-Day Workout Program for Homeowners. As you know, with over 118,000 foreclosure filings according to RealtyTrac in 2009 alone, Michigan still records unprecedented level of foreclosures. It is critical that the State Legislature stay on top of this important issue and continue to do all that it can to combat the current crisis, as well as prevent future crises of this magnitude.

We also would like to thank you once again for your leadership in passing Public Acts 29, 30, and 31 of 2009—the 90-Day Workout Program for Homeowners. MFTF and our partner organization the Michigan Foreclosure Prevention Project (which concentrates on legal services attorneys battling foreclosure) have worked in tandem to help inform certified nonprofit housing counselors and legal services attorneys, as well as distressed homeowners of their rights, roles, and responsibilities under this program. We have conducted statewide and local trainings on the new law and helped families, housing counselors, and legal services attorneys implement the law. We have conducted quarterly meetings to track the laws' implementation, its progress, and to address problems. In fact, we have worked closely with lender and servicer law firms like Trott and Trott, Orleans, Potestivo, and others to facilitate a meaningful and productive utilization of the new law.

Given the continuing foreclosure crisis that exists and is expected to continue over the next 24 months, MFTF encourages the House and Senate to extend these laws beyond their expiration dates and to adopt specific process improvements.

Survey of Impacts of New 90-Day Law

In early June, MFTF and MFPP conducted an extensive online survey of our members and their experiences with the new 90-Day Law. The results of the survey suggest that, while improvements can and should be made to this important law, overall, **the new 90-Day Law has been an important tool in stemming foreclosure in Michigan by encouraging borrowers and lenders/servicers to work constructively on loan modifications and other solutions.** Specifically, the survey's 64 respondents, who were certified housing counselors and legal services attorneys who work with distressed borrowers day in and day out, reported that:

- 48% of respondents felt that there had been a decrease in foreclosure sales since the 90-Day Law went into effect, compared to only 18% who felt there had been an increase.
- While less than 22% believed that a homeowner was likely to be offered a loan modification before the 90-Day Law, more than 60% believed that a homeowner was likely to be offered a loan modification after the 90-Day Law went into effect.
- Only 12.7% believed that a homeowner was likely to receive a sustainable loan modification before the 90-Day Law, but 53.5% believed that a homeowner was likely to receive a sustainable loan modification after the 90-Day Law went into effect.
- While only 14.1% believed that a homeowner was likely to receive a loan modification after initially being denied, 50% believe that a homeowner was likely to receive a loan modification after initially being denied after the 90-Day Law went into effect.
- While only 26.6% believed that a homeowner was likely to be offered additional loss mitigation alternatives before the 90-Day Law, 58.7% believed that a homeowner was likely to be offered additional loss mitigation alternatives after the 90-Day Law went into effect.

Respondents also praised the 90-Day Law with giving homeowners the opportunity to negotiate with a person who had the authority to make decisions on behalf of the lender or servicer, although often that is not the person who is sent to the face-to-face meeting. Other successes included a strong belief that lenders and servicers were not pursuing foreclosure while the 90-day foreclosure period is in process, although 40 percent felt that this does happen on occasion. Unfortunately, respondents also reported that the lender or servicer did not follow up with them or the homeowner. Over 80% reported that the designated agent attending the face-to-face always (29.6%), often (31.5%), or sometimes (22.2%) had no authority to act.

Most disturbing were results that indicated that lenders and servicers were not following the requirements of the 90-Day Law. **More than 70% reported that homeowners rarely or never receive the loan modification guidelines prior to the face-to-face meeting, even if requested. Similarly, more than 70% reported that homeowners rarely or never receive the loan modification calculations when a loan modification is not offered.**

Suggestions for Improvements to the Public Acts 29, 30, and 31 of 2009

Based upon these survey results, as well as the quarterly meetings among certified housing counselors and legal services attorneys, as well as the daily experiences of MFTF and MFPP leadership interacting with housing counselors and attorneys, MFTF recommends the following improvements to Public Acts 29, 30, and 31:

1. Require the Designated Agent of the Lender or Servicer to Possess the Authority to Negotiate. As noted, over 80% of the survey respondents reported that at least some of the time (with 60% reporting “always” or “often”), the designated agent has no authority to act. Adding meaningless meetings to the process is a costly endeavor to each side and should be modified to insure that meaningful discussions are held at these face-to-face meetings.
2. End Publication of the 90-Day Notice. Scam operators have been preying upon distressed homeowners. Since the new 90-Day Laws’ passage, MFTF, MFPP, and the Attorney General Mike Cox’s office have uncovered a number of companies sending notices to distressed borrowers advertising services which the law limits to certified nonprofit housing counseling agencies. Using names like 14daynotice.com these companies presumably are using the publication of late borrowers to engage in direct mail campaigns that violate Michigan laws and take advantage of distressed homeowners.
3. Clearly Spell Out that the 90-Day Period Is a Minimum Period and that Modification Negotiations Still in Process Can Not be Foreclosed Upon. In other words, a minority of lenders and servicers are waiting for the 90-day negotiation period to expire without really negotiating. This tactic is depriving the law of its real value—mandating that lenders and servicers seek to work out alternative arrangements before they file foreclosure actions. If lenders and servicers are merely waiting for a time period to expire and not actually considering a modification, then the law loses its value. While we believe that foreclosing on a homeowner whose modification request has not been denied on day 91 is a violation of the acts, clarifying this in statute would eliminate the need to go to court on such matters.
4. Extend the Initial 14-Day Response Period. Housing counseling organizations are seeing a lot of clients who contact them after the initial 14-day period. While some law firms have accepted requests of these homeowners to enter into a negotiation under the law, others have not. The fact that significant numbers of homeowners are seeking to utilize the 90-Day Law after the initial 14 days suggests that the deadlines should be moved back.
5. Make the Notice Come from MSHDA or OFIR. The initial notice of the 90-Day Law comes from the lender or servicer or their law firm. Experiences in North Carolina suggest that some borrowers have adopted unfortunate habits of ignoring letters from their lender or servicer. A letter from MSHDA or OFIR has a greater chance of being opened and read and, therefore, inspiring a homeowner to action to avail themselves of the opportunities created by the law.

Again, the 250-members of the Michigan Foreclosure Task Force would like to thank the House and Senate Banking Committees and Governor Granholm for the creation of

Public Acts 29, 30, and 31 of 2009. The laws have succeeded in reducing foreclosures and encouraging successful workouts and modifications, as well as alternative mitigation measures. It is our hope that the Legislature will extend the laws beyond their sunset and improve upon their foundation.

Sincerely,

Lisa Nuskowski
Co-Director, Michigan Foreclosure Task Force