Michigan Foreclosure Process: An Overview

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Michigan Poverty Law Program is the statewide back-up center for legal services programs. The Michigan Poverty Law Program (MPLP) is a cooperative effort of Legal Services of South Central Michigan and the University of Michigan Law School.

MPLP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.

Michigan Foreclosure Prevention Project (MFPP) is a project of the Michigan Poverty Law Program. The Michigan Foreclosure Prevention Project is a collaborative statewide project involving the major legal services programs. The goal of the Project is to provide comprehensive and coordinated foreclosure prevention advocacy throughout the state by 1) providing direct legal representation to homeowners facing foreclosure, 2) providing support to housing counseling organizations, 3) coordinating policy advocacy on a statewide basis, and 4) providing training and technical support.

- MFPP Project launched in 2009.
- 2009-2012 - assisted over 16,000 homeowners and saved over 7,000 homes.

Michigan Foreclosure Process: An Overview

- Foreclosure Process
- Michigan's Pre-Foreclosure Process a/k/a 90-Day Law
- CFPB Rules
- Michigan's 90-Day Law and the CFPB Rules

Understanding the Foreclosure Process in Michigan

Two methods of foreclosing on a mortgage loan:

- By Going to Court

OR

- By Scheduling a Sheriff Sale (by advertisement in the local newspaper)

Foreclosure by Advertisement

- Non-judicial foreclosure process
- Mortgage must contain "Power of Sale" Clause that permits foreclosure by advertisement
- Notice is by publication in a newspaper

Pre-Foreclosure Process – 90-Day Law

- Began July 5, 2009
- Applies to the Foreclosure by Advertisement
- Intent – to bring all parties to the table
- Requires a mandatory 90-day pre-foreclosure process to avoid foreclosure.
- Sunsets July 4, 2011
- Extended to December 31, 2012
- Extended to June 30, 2013

Applicability:

Applies to:

- principal residence
- exempt from taxes (homestead exemption)

Requirements for Mortgage Holder or Servicer

-- Cannot begin to foreclose by advertisement before participating in a 90-day pre-foreclosure workout process

-- Send written notice to borrower

Contents of Written Notice:

State why the mortgage loan is in default, the amount due and owing the mortgage loan.

The names, addresses, and telephone number of the mortgage holder, servicer or designated agent.

Provide a list of housing counselors approved by HUD and MSHDA.

Within 30 days after the notice is mailed, the borrower may request a meeting, either directly or through a housing counselor.

Notice that if the borrower requests the meeting, foreclosure proceedings will not begin until 90 days after the date the notice is mailed to the borrower.

Contents of Written Notice (contd):

VI. Notice that if the borrower and the designated agent agree to modify the loan, and the borrower complies with the terms of the loan, the mortgage will not be foreclosed.

Notice that if the borrower and the designated agent do not agree to modify the loan but it is determined that the borrower is eligible for a loan modification based on the criteria set out in the statute and foreclosure by advertisement is not allowed under section 3205c(7), the mortgage holder or servicer cannot foreclose by advertisement and will have to foreclose by going to court.

VIII. Borrower may request a housing counselor to attend the meeting.

Notice to be sent:

- Regular first class mail
- Certified Mail
- **May** Publish in the Newspaper

30-60-90 Timeline

30 days:

-- The borrower, either directly or through a housing counselor, must contact the designated agent and ask for a meeting within 30 days after the notice is mailed

-- If the designated agent doesn't hear from the borrower within 30 days, the borrower has opted out of the 90-day process, and the lender will proceed to foreclose by advertisement.

60 Days:

-- The designated agent must request the documents within 10 days after being contacted by the borrower or the housing counselor.

-- Within 60 days after the notice is mailed, the borrower must provide the designated agent with any requested documents.

-- If the borrower does not provide the requested documents within 60 days after the notice was mailed, the lender can proceed to foreclose by advertisement.

90 Days:

-- After being informed that a borrower wishes to meet, the designated agent must schedule a meeting with the borrower.

-- Before 90 days after the notice is mailed or 10 days after the meeting between the borrower and the designated agent, whichever is later, the designated agent must provide the borrower with a copy of the loan modification calculations, and, at the borrower's request, a copy of the lender's modification guidelines, program or process.

What happens if the lender does not comply with the pre-foreclosure process?

♦ Lender must foreclose by going to court

Consumer Financial Protection Bureau (CFPB)

created by

Dodd-Frank Wall Street Reform and Consumer Protection Act

Signed July 21, 2010

- CFPB became a bureau July 21, 2011)
- Richard Cordray first Director of the CFPB – January 4, 2012
- Began Rule making – in 2012

Mortgage Servicing Rules

- New Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) - effective January 10, 2014

- Covers:
  - -- Periodic billing statements – addressing contents of statements
  - -- early notices before interest rate adjustments
  - -- prompt crediting of payments and prompt response to payoff balances
  - -- early notice before issuing force-placed insurance and steps to take to preserve existing insurance for homeowners with escrow accounts
  - -- error resolution and information requests – revises the "qualified written requests" process – new timeline to respond – 5 business days to acknowledge and 30 business days to respond
  - -- loss mitigation

Loss Mitigation Rules

Early Intervention
Continuity of Contact
Loss Mitigation Procedures

Early Intervention Requirements for Delinquent Borrowers (12 CFR § 1024.39)

Section 1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.

-- Delinquency begins on the day a payment is due and unpaid.

Example: If a payment due date is January 1 and the amount due is not fully paid during the 36-day period after January 1, the servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.*, by February 6.

Establishing Live Contact:

♦ includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message

(b) *Written notice.* (1) *Notice required.* . . . , a servicer shall provide to a delinquent borrower a written notice with the [certain] information . . . not later than the 45th day of the borrower's delinquency.

Example:

If a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—*i.e.*, by February 15.

(2) *Content of the written notice.* The notice required . . . this section shall include:

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a) and the servicer's mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The website to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

Official Bureau Interpretations - 39(b)(2) Content of the written notice.

1. *Minimum requirements.* Section 1024.39(b)(2) contains minimum content requirements for the written notice. A servicer may provide additional information that the servicer determines would be helpful or *which may be required by applicable law* or the owner or assignee of the mortgage loan.

Continuity of Contact (12 CFR § 1024.40)

♦ A servicer is required to assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice but not later than the 45th day of the borrower's delinquency.

♦ Assigned personnel is to respond to borrower's inquiries and assist the borrower with available loss mitigation options.

Loss Mitigation Procedures (cont'd) (12 CFR § 1024.41)

5) A servicer is prohibited from making the first notice or filing required for a foreclosure process until a mortgage loan account is more than 120 days delinquent.

♦ *Official Bureau Interpretations - 41(f)(1) First notice or filing required by applicable law.* The first notice or filing required by applicable law refers to any document required to be filed with a court, entered into a land record, or provided to a borrower as a requirement for proceeding with a judicial or non-judicial foreclosure process.

Small Servicers 12 CFR § 1026.46(e)(4)(ii)

♦ The rule exempts small servicers from most requirements but requires them to comply with the 120-day period.

♦ A small servicer is a servicer that either:

Services 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or

Is a Housing Finance Agency, as defined in 24 CFR 266.5.

CFPB Timeline

Delinquent (payment due and unpaid)	-	Day 1
Live contact (phone call)	-	Day 36
Written Notice	-	Day 45
Cannot Initiate Foreclosure Process	-	Before Day 120

Impact on 90-Day law

CFPB Timeline	90-Day Timeline
Delinquent - Day 1	Delinquent - Day 1
Live Contact – by Day 36	
Written notice – by Day 45	3205 Written Notice - sent 90 - 120 days – industry practice
	30-60-90- Timeline
Cannot Initiate Foreclosure Process – Before Day 120	Cannot Initiate Foreclosure Process Before Day 90

Impact on 90-Day law (cont'd)

CFPB Timeline	90-Day Timeline
Delinquent - Day 1	Delinquent - Day 1
Live Contact – by Day 36	
	Proposed scenario of 30-60-90- timeline:
Written notice – by Day 45	3205 written notice – by Day 30
	Opt in period – by Day 60
	Financials submitted – by Day 90
	Meeting – by Day 120
Cannot Initiate Foreclosure process – Before Day 120	

QUESTIONS?

Resources

- Michigan Foreclosure Prevention Project
  http://miforeclosure.mplp.org/
- Michigan Foreclosure Task Force
  http://www.cedam.info/foreclosure.htm
- Michigan State Housing Development Authority (MSHDA) – finding a housing counselor in your area
  http://www.mshda.info/counseling_search/