

State of Foreclosure: Progress and Solutions
Thursday, November 12, 2009
10:00 a.m.
California State Capitol, Sacramento
Room 447

Consumer Perspective on Foreclosure Mediation
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On behalf of Consumers Union,¹ I thank you for taking a closer look at this very serious issue and giving careful consideration to how innovative approaches, such as mediation, can be used to minimize the number of foreclosures in our state.

The State of Foreclosures

There is a dire need to minimize the number of foreclosures in California. As the state with the highest number of foreclosures in the country, more California homeowners are at risk of losing their home to foreclosure than homeowners in any other state. According to the latest figures reported by Realtytrac.com, in September 2009 there were 86,337 foreclosure properties in California, which represents one in every 154 housing units.² Compounding the high number of foreclosures, as more Californians are seeking viable solutions, many of them are reporting delays, confusion and non-responsive servicers when trying to obtain loan modifications through the Home Affordable Modification Program (HAMP).

The latest statistics on HAMP modifications were released this Monday and for consumers, the news is not terribly encouraging. The HAMP program began in March 2009 and after six months of activity, HAMP trial loan modifications have been offered to only 20 percent of the estimated eligible loans that are reported 60 or more days delinquent. Trial plan offers have been extended to 29 percent of the estimated eligible loans

¹ Consumers Union of United States, Inc., publisher of *Consumer Reports*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 7.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

² <http://www.realtytrac.com/TrendCenter/default.aspx>

that are reported 60 or more days delinquent.³ Nonetheless, the vast majority of homeowners who hold loans that are estimated to be eligible for HAMP modifications have not been helped.

Treasury met its goal of 500,000 trial loan modifications by November 1, 2009,⁴ however, it's Consumers Union's position that this goal was too modest, given the potential of the initiative. Also, while some of the largest participants have made progress, Bank of America, holding the largest portfolio of HAMP eligible loans, is seriously lagging behind while it has the greatest potential to make a significant difference in the success of the program. According to Treasury Data, Bank of America, alone accounts for 30 percent of the total estimated number of loans eligible for HAMP assistance. Yet only 14% of the eligible loans it holds are in trial modifications, and only one out of five of the eligible loans it holds have had trial offers extended (21 percent).⁵

What about all of the homeowners who are trying to get HAMP modifications and are repeatedly running into brick walls?

One example involves homeowners from Los Osos, California. They reported to Consumers Union that they have been trying for over 6 months to obtain a HAMP loan modification through their loan servicer, OCWEN Loan Servicing LLC. Details about their situation were reported to you by Pedro Morillas of CALPIRG at the Los Angeles informational hearing you held on this subject in October.

Most recently, these homeowners received a letter from their loan servicer denying their request for a HAMP loan modification. The servicer said it had received incomplete information. These homeowners are utterly frustrated and say that they dutifully provided all of the information requested by their servicer. Then, they say, their loan servicer would ADD something new that had NOT been requested before, either by phone or on the servicer's website.

Currently, these homeowners are contesting their servicer's finding that they don't qualify for a HAMP loan modification because they are not in "imminent default." These homeowners are confused by this finding

³ U.S. Dept. of the Treasury, *Making Home Affordable Program, Servicer Performance Report through October 2009*, available at

<http://makinghomeaffordable.gov/docs/MHA%20Public%20111009%20FINAL.PDF>

⁴ See http://www.makinghomeaffordable.gov/pr_10082009.html

⁵ U.S. Dept. of the Treasury, *Making Home Affordable Program, Servicer Performance Report through October 2009*, available at

<http://makinghomeaffordable.gov/docs/MHA%20Public%20111009%20FINAL.PDF>

because they don't understand how much more imminent their default could get. They have managed to pay their mortgage but under great hardship because of loss of income through unemployment. Currently they are awaiting review of this decision.

Many homeowners share this frustration.

- Consumers Union has received many calls from homeowners who are at wits end trying to figure out how to navigate the loan modification maze while they're quickly running short on the time and the money necessary to avoid foreclosure.
- They've waited patiently for months after being told not to call into their servicers because that will delay their application.
- They've spent thousands of dollars on loan modification counseling advice from outfits who say they work with attorneys who can deliver modifications, only to find that there's no modification in their horizon and that they could have gotten the same advice for free.

No doubt, many of the homeowners who are seeking modifications and who are falling through the cracks are Californians.

One way to improve loan modification opportunities for California homeowners is to engage mediators in the process to ensure that homeowners' interests are being served. This, of course, is not meant to take the place of lenders, servicers and homeowners each doing their share to make modifications a viable option.

Homeowners such as the Los Osos family and others could be helped by an effective mediation program to obtain a decision on their loan modification applications in a timely and fair manner. This is the result all of these initiatives should strive for. No homeowner acting in good faith should have to endure a lengthy, haphazard and confusing process, or worse yet, be unfairly denied a loan modification because of a servicer error.

Any mediation process contemplated by AB 1588 to address this urgent need must be:

- easily accessible by those who need it,
- must be fair and transparent,
- and must hold those who participate accountable for their actions.

One way to encourage fair outcomes is to require servicers participating in mediation to report data on their mediation activities. The mediation program should require that the data be made available to the public and that it be reported to a court of law and/or designated regulators responsible for administering and monitoring the program.

Conclusion:

Ultimately, the goal of any successful intervention related to mortgage loan modifications is to prevent unnecessary foreclosures. Involving a neutral third party to review loan modification applications and the results of those applications may go a long way towards meeting that goal.

Consumers Union thanks you for this opportunity to offer testimony on this very important topic and looks forward to working with you on crafting legislation to encourage more timely and fair outcomes in the loan modification process.