

2010 NCSHA Annual Awards for Program Excellence

Category: Special Achievement

**Training Lawyers to Help Homeowners**

**PHFA's Foreclosure Prevention Efforts**

During recent years, foreclosure prevention and mitigation has become increasingly important as more homeowners across the nation become delinquent on their mortgages and face the possibility of losing their homes. Pennsylvania Housing Finance Agency ("PHFA") has long been an innovative force in foreclosure prevention, and in the face of the recent turmoil in the housing market, PHFA, in cooperation with NeighborWorks® America and the Pennsylvania Legal Aid Network ("PLAN"), has worked to provide homeowners with the resources necessary to prevent the loss of their homes.

The recent economic and financial crises have reduced the repayment rates of homeowners, and demand for Pennsylvania's Homeowners' Emergency Mortgage Assistance Program ("HEMAP") has been skyrocketing: the number of applications in 2008 increased almost 14.5% over 2007, and increased another 16.5% from 2008 to 2009. HEMAP has helped thousands of Pennsylvanians stay in their homes, but the program is intended to help homeowners who can be reasonably expected to resume their mortgage payments within twenty-four months. In the current economic environment, fewer people losing their jobs have a realistic prospect of quickly finding full-time employment to resume mortgage payments negotiated before the housing crash. In response to these conditions, PHFA has been aggressive in procuring additional funds for foreclosure mitigation counseling and in ensuring that consumer credit counseling is provided to those Pennsylvanians facing foreclosure.

In 2008, PHFA expanded the consumer credit counseling efforts already provided to Pennsylvanians by participating in NeighborWorks® America's National Foreclosure Mitigation Counseling Initiative. With grants from NeighborWorks® America and other sources and through the Agency's network of 114 counseling agencies, PHFA has counseled more than 28,000 homeowners between 2008 and May of 2010.

Counselors may guide homeowners toward programs offered by PHFA, such as HEMAP, or Refinance into an Affordable Loan ("REAL") and Homeowners' Equity Recovery Opportunity ("HERO"), programs that refinance high interest adjustable rate mortgages into 30 year fixed rate mortgages. Counselors also work with the homeowner's lending institution for a loan modification, forbearance and repayment plan, refinancing, or, if necessary, help the homeowner with the sale of their home or with beginning the bankruptcy process.

In some cases, however, legal issues prevent the counselors from delivering the assistance a homeowner needs.

**Foreclosure Prevention through Legal Assistance**

Although consumer credit counselors can do much to prevent a foreclosure, many problems faced by homeowners cannot be solved by credit counseling alone. Often homeowners face problems requiring the assistance of an attorney: foreclosures, delinquencies, and short sales often generate legal issues, and some homeowners may be victims of predatory lending practices. Unfortunately, counseling agencies may not be capable of assisting in such matters due to the complexity of the issue or staffing limitations. If not addressed immediately, these issues can result in costly delays, causing homeowners to become more delinquent in their payments, more interest to accrue, and less favorable terms in negotiations with lenders.

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In response to these challenges, PHFA and PLAN have partnered to offer Pennsylvanians facing foreclosure with the legal assistance often necessary to prevent the loss of their homes. With more than two million dollars for legal assistance provided by NeighborWorks® America, PHFA and PLAN have supplemented the existing network of PHFA approved consumer credit counselors and financial service counselors with legal services attorneys working to ensure that Pennsylvanians facing foreclosure have legal representation when necessary.

PLAN, with a network of sixteen different legal aid organizations, provides expert legal advice free of charge to low-income individuals and families across the state of Pennsylvania. This network of attorneys is ready to provide legal assistance to homeowners, allowing consumer credit counselors to focus on their area of expertise while attorneys expeditiously resolve legal problems that, if left unaddressed, can seriously delay or completely prevent homeowners from curing their mortgage delinquencies.

When a consumer credit counselor discovers that a homeowner faces legal issues requiring an attorney's attention, the counselor may refer a homeowner to a participating legal agency by using a simple form developed by PHFA and PLAN to allow expeditious referrals. Filled out, the form contains much of the information necessary to provide legal assistance to a homeowner, including the homeowner's name, lender, and loan number as well as details about the delinquency and the date of the sheriff sale, if the lender has filed for foreclosure. The form also contains checklists describing situations in which a consumer credit counselor should refer homeowners for legal assistance as well as the documents necessary to assist clients facing each legal issue. These forms and checklists allow most legal referrals to be executed quickly, with less time spent relaying information between the homeowner, credit counselor, and attorney and more time devoted to resolving the issues preventing homeowners from curing their default or selling their home.

Once a homeowner is referred for legal assistance, the attorney can assist the homeowner by providing advice about the legal and tax consequences of different options available to the homeowner, by resolving title issues, by negotiating with mortgage servicers to resolve defaults, or by pursuing remedies to predatory lending practices or Truth in Lending Act issues. Attorneys can also assist by drafting and preparing documents for the homeowner, including forbearance and repayment agreements. Finally, the assistance of legal services attorneys frees foreclosure mitigation counselors to concentrate on delivering the services homeowners need to keep their homes, knowing that legal issues can be resolved expeditiously with just a simple referral.

### **PHFA and PLAN's Attorney Training Program**

A common complaint reported to NeighborWorks® America has been a shortage of attorneys with relevant experience in consumer protection. To ensure that attorneys are prepared to serve Pennsylvanians facing foreclosure, PHFA and PLAN cooperated with the Pennsylvania Bar Institute to develop a Continuing Legal Education ("CLE") program to train attorneys to provide the legal assistance often required to prevent a foreclosure. The product of these efforts is a program entitled *Avoiding Foreclosure: Helping Families Keep Their Homes*.

The *Avoiding Foreclosure* CLE was originally presented in March of 2009 and has since been re-presented four times, allowing more than 250 people to attend the training program and 198 attorneys to receive a CLE credit for the program. The original presentation was presented just outside of the state capital, Harrisburg, and was simulcast in four cities throughout Pennsylvania with a need for attorneys able to provide foreclosure related legal assistance. Each re-presentation occurred in a new city, with the exception of Philadelphia, an area of extremely concentrated need for foreclosure-related legal assistance.

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During the full day training program, attorneys from both PHFA and from the PLAN network of legal services providers introduced attendees to the NeighborWorks® America Foreclosure Mitigation Counseling Initiative. The syllabus of the program discussed the roles attorneys play in foreclosure prevention and mitigation efforts in Pennsylvania; addressed confidentiality, coordination, and ethical issues that may arise with a homeowner referral; discussed loan documents and using the Real Estate Settlement and Procedures Act to obtain documents and resolve disputes, explored effective methods of working with mortgage servicers to avoid a foreclosure filing; reviewed predatory lending practices and the remedies offered in the Truth in Lending Act; and discussed servicing problems and dispute resolution.

Each attorney attending the *Avoiding Foreclosure* CLE was provided with a handbook for reference, including explanations and examples of loan documents and programs offered by PHFA along with contact information for legal services programs throughout Pennsylvania. PHFA counsel John Groyl and Samara Gomez were instrumental in the creation of the *Avoiding Foreclosure* CLE handbook as well as the coordination and presentation of the original training event.

Should participating attorneys desire to revisit the training program or share the program with their colleagues, the entire program, including video replays of the presentations and electronic versions of all course materials, is available for free on PLAN's website ([http://www.palegalaid.net/CLE\\_Avoiding\\_Foreclosure.htm](http://www.palegalaid.net/CLE_Avoiding_Foreclosure.htm)). The result of the *Avoiding Foreclosure* CLE is that in addition to the 111 PLAN network attorneys providing foreclosure related legal services, many private attorneys throughout Pennsylvania are trained to assist homeowners facing foreclosure.

Through June of 2010, PLAN has assisted 2,694 homeowners referred for legal assistance by foreclosure mitigation counselors, and continues to assist new clients. The *Avoiding Foreclosures* CLE has had benefits beyond the Foreclosure Mitigation Counseling Initiative as well. Private attorneys trained to assist homeowners may now provide pro bono assistance to homeowners throughout the state, and in Philadelphia, trained attorneys are better prepared to participate in the Court of Common Pleas' Residential Foreclosure Diversion Program. In the Residential Foreclosure Diversion Program and in similar programs adopted locally throughout Pennsylvania, homeowners and lenders must participate in a conciliation process to discover possible loan work-outs and other solutions to prevent a sheriff's sale. These judicially administered programs require attorneys familiar with foreclosure prevention techniques, and together, PHFA, PLAN, and the Pennsylvania Bar Institute have created a program that allows attorneys to better practice in these conciliation programs.

### **Program Legacy**

Because of PHFA's efforts, many people in Pennsylvania facing the prospect of foreclosure have saved their homes. HEMAP is now being emulated by the Federal government as the Emergency Homeowners' Relief Fund, one component of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act. Although foreclosures continue to occur in Pennsylvania, the results of PHFA's participation in NeighborWorks® America's National Foreclosure Mitigation Counseling Initiative are outstanding, demonstrating that effective consumer credit counseling combined with innovative programs like HEMAP, REAL, and HERO can significantly improve a homeowner's chances of avoiding foreclosure, preventing billions of dollars of losses to both lending institutions and homeowners. Coordinated with the legal assistance provided by PLAN, consumer credit counseling provided by PHFA is more effective than ever. By partnering with PLAN and by providing attorneys with foreclosure related legal training, PHFA ensures that Pennsylvanians in need of legal assistance to avoid a foreclosure will have the representation necessary to stay in their home.