

Unintended Consequences of Failing to Provide Adequate Funding for HEMAP

Overview

The Pennsylvania Homeowners' Emergency Mortgage Assistance Program (HEMAP)¹ offers two significant benefits to homeowners who are behind on their mortgages and are in danger of foreclosure.²

First, HEMAP, provides loans to qualifying homeowners who are delinquent due to circumstances beyond their control, but who have a reasonable likelihood of resuming full mortgage payments within 24 or 36 months (depending on the state unemployment rate).

Equally important, the statute gives homeowners time to try to resolve their problems, *whether they end up qualifying for a HEMAP loan or not*. Depending on the timing, a homeowner can get up to 120 days to try to resolve his financial difficulties before the lender can start a foreclosure proceeding.

Since about 30% of mortgagors who are 60 days delinquent are able to self-cure within a year³, the additional time provided by HEMAP is a significant benefit, in and of itself.⁴

If HEMAP is defunded, the statute makes it clear that the provisions – including those for notice and the delay of the start of the foreclosure process – will no longer apply.

HEMAP Requires Notice and Time to Cure

Before a lender can start a foreclosure action against most Pennsylvania homeowners,⁵ the lender must send a notice stating that the homeowner may be eligible for HEMAP loan assistance, detailing the total amount due, providing contact information for housing counseling agencies,

¹ See, 35 P.S. §. 1680.401 *et seq.* (the “Statute”) and 12 Pa. Code § 31.201 *et seq.* See also, <http://www.phfa.org/consumers/homeowners/hemap.aspx>

² HEMAP is administered by the Pennsylvania Housing Finance Agency (PHFA).

³ Willen, Paul, *Why Few Lenders Are Modifying Loans, in Communities & Banking*, Boston Federal Reserve, http://www.bos.frb.org/commdev/c&b/2010/spring/Willen_few_lenders_modifying_loans.pdf at pp. 18-19 (last accessed March 17, 2011).

⁴ The Statute also requires lenders to tell homeowners how and where they can find PHFA-approved housing counselors, who might have valuable information about help, programs, and strategies.

⁵ To be eligible for HEMAP, properties must be owner-occupied, one or two-family structures that have no more than two mortgages and are not FHA-insured. Some other restrictions apply, as well. 35 P.S. § 1680.401c.

and advising them that they have 33 days to work with the housing counselor to attempt to resolve the delinquency (the “Act 91 Notice”).⁶

If the homeowner meets with a housing counselor within that 33-day period, the mortgagee is prohibited from filing the foreclosure for another 30 days.⁷ If the homeowner applies for a HEMAP loan within that 30-day period, there is a delay of up to 60 days, during which PHFA considers the application.⁸ Thus, a homeowner who follows all of the steps outlined in the Statute can get up to 120 days to try to resolve the mortgage delinquency before the mortgagee can file a foreclosure – critical time a homeowner can use to self-cure even if they do not end up receiving a HEMAP loan.

Defunding HEMAP will Shorten Foreclosure Times in Pennsylvania

If HEMAP is not fully funded, the HEMAP statute provides that its provisions – including those related to notice and delay – will no longer apply. When it becomes clear there will not be enough money to fund the HEMAP program, the statute requires PHFA to publish a notice to that effect in the Pennsylvania Bulletin and alerting the public that the provisions of the statute are no longer in effect.

The HEMAP statute makes this clear.

In the event that the funds available to the agency in the Homeowner's Emergency Mortgage Assistance Fund for purposes of this article become insufficient as officially declared by the executive director of the agency at least sixty (60) days prior to the funds being depleted, the agency shall immediately publish an announcement to that effect in the Pennsylvania Bulletin, which announcement shall include a date certain which shall be at least ninety (90) days after said announcement after which mortgagees shall no longer be subject to the provisions of this article and mortgagees may, at any time after the published date, take legal action to enforce the mortgage without any further restriction or requirement under this article.⁹

After such a notice is published and the specified time passes, the Act 91 Notice now mandated by law would no longer be required. Homeowners would not be directed to housing counseling agencies that could help them resolve their financial difficulties. Homeowners would not be entitled to the time to try to find a way to self-cure that the statute currently provides. Lenders could start foreclosure proceedings immediately.

Shortening Foreclosure Times Will Exacerbate Existing Difficult Conditions

⁶ 35 P.S. § 1680.403c(b)(1). See also http://www.phfa.org/forms/hemap/hemap_act91_notice.pdf

⁷ 35 P.S. § 1680.403c(b)(4).

⁸ 35 PS. § 1680.403c(b)(6).

⁹ 35 P.S. § 1680.409c.

Pennsylvania continues to experience extremely high foreclosure rates. The severity and length of the problem has already created serious difficulties in neighborhoods across the state.

These problems will be exacerbated if HEMAP is not adequately funded. Foreclosure times will be shortened, which will likely increase the number of vacant properties and significantly worsen the extremely challenging conditions already facing many families and communities. In addition, the loss of the statutory delay that HEMAP provides is also likely to adversely impact the work of the numerous foreclosure diversion programs operating in cities and counties across Pennsylvania.