



We make home possibleSM

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The Honorable Chief Justice Peggy A. Quince
c/o the Clerk of Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1900

Re: Comments on the Final Report and Recommendations on Residential
Mortgage Foreclosure Cases

Dear Chief Justice Quince:

We appreciate the opportunity to comment on the *Final Report and Recommendations on Residential Mortgage Foreclosure Cases* issued by the Florida Supreme Court Task Force ("Task Force"). Freddie Mac supports the efforts of the Task Force to keep families in their homes by facilitating communications between servicers and homeowners. Our comments focus on the Task Force's recommendation to require plaintiffs in foreclosure actions to verify that they own and hold the mortgage secured by the property subject to foreclosure.

Freddie Mac does not originate loans in the primary residential mortgage market. We fulfill our mission by purchasing mortgages in the secondary market and securitizing them into mortgage-related securities that can be sold to investors. Banks and non-bank financial companies typically service the mortgages that we own in accordance with the requirements set forth in our Single-Family Seller/Servicer Guide (the "Guide"), which is our master servicing contract.¹ Using a variety of foreclosure prevention methods, Freddie Mac, through our servicers, has helped more than 85,000 borrowers lower their mortgage payments or modify their loans to a more sustainable level in the first half of 2009. Freddie Mac is also playing a key role in sustaining homeownership by supporting President Obama's Making Home Affordable Program.

Guiding Principles

It is our understanding that the primary purpose of the mediation program is to facilitate communications between homeowners and servicers about foreclosure alternatives

¹ The *Single-Family Seller/Servicer Guide* is one of the Purchase Documents that is incorporated by reference into, and constitutes a part of, each Purchase Contract with a Seller/Servicer. A Seller is required to service all mortgages that the Seller has sold to Freddie Mac and has assented to service for Freddie Mac in accordance with the standards set forth in the Seller's Purchase Documents. Even if a Servicer who services mortgages for Freddie Mac is not also the Seller of the Mortgages to Freddie Mac, the Servicer must service loans in accordance with the Guide.

before homes are actually sold in foreclosure. Freddie Mac works closely with experienced mortgage servicers to help keep families in their homes. We require our servicers to make attempts to contact and communicate with borrowers early in the delinquency. When a borrower is late on a mortgage payment, servicers must contact the borrower to determine why the borrower missed the payment and make arrangements to collect the amount owed. If a borrower is experiencing financial difficulty in making his mortgage payment such that the mortgage is in default or in imminent danger of default, the servicer must work with the borrower to find a sustainable foreclosure prevention strategy. Before foreclosing on a property, our servicers must consider foreclosure alternatives, such as repayment plans, loan modifications, refinancings, and forbearance plans.

Based on our experience, we recommend the Task Force develop a mediation program based on the following primary guiding principles. First, we suggest the time period between filing a foreclosure action and mediation should be specified and limited in duration. Mediation programs should not unnecessarily delay the foreclosure process. A prolonged time period adds to the negative impact already experienced in these markets as properties fall into further disrepair, compounded by continued depreciating property values. Additionally, a prolonged time period causes borrowers to incur increased mortgage arrearages and other fees associated with foreclosure. Delays in the foreclosure process also expose communities to increased social disorder and crime due to blighted property conditions. Currently, the average foreclosure period in Florida for a Freddie Mac loan is about 17 months. During the first six months, our servicers are making attempts to work with homeowners to pursue loan restructurings or other foreclosure alternatives.

Second, we believe mediation should not be required if the homeowner does not request mediation or if the loan has been previously modified. Where prior loan modifications have been unsuccessful, mediation will likely result in unnecessary delays of foreclosure proceedings resulting in greater losses to the consumer. Homeowners who have restructured their loans, but were still unable to keep their home may not benefit from mediation. In such cases, mediation will not serve the intended purpose of keeping families in homes they can afford.

Third, we believe mediation should be offered only to homeowners who are occupying the property as a primary residence, and not using the property for investment purposes. A borrower who is occupying the home as a primary residence is more likely to attend mediation and work with servicers to keep the home. A borrower who does not occupy the property may not have a desire to sustain homeownership.

Recommendation regarding verification of “ownership” of the mortgage

The Task Force has recommended a requirement for a plaintiff in a foreclosure action to verify that it owns and holds the note. Typically, the plaintiff in a foreclosure action does not own the underlying note or loan that is secured by the property subject to the foreclosure proceeding. Freddie Mac’s servicers initiate foreclosure actions in their names, even though they are not the owners of the notes or loans in question, because they are the mortgagees as shown on the land records and they are the holders or otherwise in possession of the notes. During foreclosure proceedings, our servicers and

foreclosure counsel have authority to negotiate and execute loan restructurings and other foreclosure alternatives with borrowers as well as attend mediation. To require investors who do not service the loan to be a party in the foreclosure action and attend mediation would be costly and unduly burdensome, which may result in additional costs being passed on to the borrower. The intended purpose of the mediation program could be achieved effectively without this verification requirement.

Additionally, the requirement that the plaintiff verify ownership of the note is not consistent with state law. Florida law (Fla. Stat. 673.3011) states that in order to enforce a debt, the plaintiff need only be either the holder of the note secured by the mortgage or a non-holder in possession of the note. Therefore, we recommend removing the requirement for plaintiffs to show that they *own* the note.

Thank you for considering Freddie Mac's views. We support efforts that give borrowers an opportunity to refinance or modify into affordable and sustainable loans as an alternative to foreclosure. Please contact me if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in purple ink, appearing to be "Reid", written in a cursive style.