Maryland Foreclosure Counseling Guide

Developed through a partnership between
the Baltimore Homeownership Preservation Coalition
and the Maryland Department of Housing and Community Development,
with support from the Abell Foundation.

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INTRODUCTION

Maryland nonprofit foreclosure intervention counselors, this Guide is for you. You have been first responders helping Maryland homeowners avoid foreclosure during the recent crisis. You have developed a set of hard and soft skills, making you a combination of social worker and loan underwriter. You have created budgets, organized documents, submitted documents, and negotiated with servicers. You are the person who has the difficult conversation with homeowners who do not have enough income to stay in their home. ***Thank you for your service.***

Counselors are fortunate that the state of Maryland is a proactive partner that provides resources and tools, including policy reform, funding, education, and outreach, to support foreclosure intervention counseling. In addition, Maryland counselors benefit from the advocacy, research, and tools developed by Maryland coalitions and nonprofit organizations.

Maryland has put an emphasis on resources and funding for counselors because research shows that you make a difference. In 2011, Urban Institute research commissioned by NeighborWorks America indicated that foreclosure intervention counseling nearly doubled a homeowner's chance of receiving a mortgage modification and significantly reduced the likelihood of re-default. A similar study, conducted in 2013, shows that homeowners who receive pre-purchase counseling from a nonprofit, HUD-certified counseling agency are one-third less likely to become 90 days delinquent in the first two years of homeownership.

The National Industry Standards for Homeownership Counseling – Foreclosure Intervention Specialty and the National Industry Standards Code of Ethics and Conduct apply to both the overall operations of housing counseling agencies and the conduct of individual counselors. The standards establish benchmarks for ensuring that counselors have adequate subject matter knowledge, get adequate training, and implement effective program operations. They validate the professionalism of our industry.

*This Guide incorporates industry **best practices** (highlighted in orange) for foreclosure intervention counseling.*

These practices will not be effective if you and your colleagues do not possess the subject matter expertise and skill sets necessary to do your jobs. The first thing you should do is review the industry standards to make sure you and your agency adhere to them. Secondly, ongoing training through NeighborWorks, and practice and review of your counseling skills, will make you an expert, homeowner-empowering, certified-professional housing counselor.

The National Industry Standards state that counselors should "possess a strong knowledge in the area of mortgage default and/or foreclosure intervention counseling, specifically relating to the current industry practices of loss mitigation to include loan repayment, forbearance, modification, refinance, loan assumption, short sale, deed-in-lieu, community referrals, and other remedies. The counselor should understand the structure of the primary and secondary markets, the collection and loss mitigation functions of those entities collecting mortgage payments, financial management and budgeting, and be familiar with state and federal regulations regarding the foreclosure process. The counselor should possess the skills to obtain pertinent homeowner information, analyze financial and property data, and draft a comprehensive written Action Plan based on the homeowner's goals."

The National Industry Standards also state that counselors should receive training and orientation for at least 90 days before seeing homeowners, and should continue to receive appropriate orientation and training during their employment. Their subject matter expertise should be accompanied by excellent communication, customer service, cultural competency, and time management skills.

During the foreclosure crisis and subsequent recession, leaders in our communities and local, state, and federal government have developed tools and resources to support your work. *The role of this Guide is to create a standard **best practice** to help Maryland housing counselors who specialize in foreclosure intervention and to provide information on available resources.*

Acknowledgments

This Guide was developed through a partnership between the Baltimore Homeownership Preservation Coalition and the Maryland Department of Housing and Community Development, with support from the Abell Foundation. Special thanks to the housing counselors and legal service providers who volunteered their services and made recommendations for improving the Guide.

Maryland Foreclosure Process

State laws have a significant impact on the speed and methodology used to foreclose on a homeowner. You should be aware that Maryland foreclosure law has changed several times since 2008. The changes have lengthened the amount of time between the start of the foreclosure process and the actual foreclosure, created a pre- and post-file mediation program, increased the amount and types of notice that homeowners receive, and reduced the statute of limitations on pursuing deficiency judgments.

In Maryland, foreclosure is conducted as either: 1) a judicial foreclosure (through the courts); or 2) a quasi-judicial process if a power of sale clause is included in the mortgage documents or deed of trust. In a power of sale clause, the homeowner pre-authorizes the mortgage servicer or lender to sell the property in the event of default, by following certain procedures.

Even for quasi-judicial foreclosures, the courts play a role. For example, an Order to Docket (OTD) must be filed with the court to begin the foreclosure process, and the court must ratify the sale for clear title to pass to the new owner. Almost all mortgages contain a power of sale, but if you have a question about a particular case, you should look at the mortgage documents to determine which type of foreclosure will be pursued. The Mortgage Bankers Association has produced an overview explaining the difference between judicial and quasi-judicial (sometimes referred to as non-judicial) foreclosure.

State law dictates minimum waiting times between each of the steps in foreclosure. It is important to note that these are minimum times and may not be a reflection of the actual time. While the servicer can lengthen the timetable between steps, the homeowner must provide documents or follow-up information within the prescribed period or risk missing out on opportunities such as mediation.

As a counselor, you should have a clear understanding of the Maryland foreclosure process so you can explain it to the homeowner and can easily identify the homeowner's current location on the timeline. The Maryland Housing Counselors Network has developed a **visual homeowner timeline** that includes the major steps a homeowner must take and the steps that must be taken by servicers and government agencies. Pre-file loss mediation is offered at the discretion of the servicer, but in practice rarely in Maryland and is therefore not included in the timeline below.

Maryland's Foreclosure Timeline

- **Delinquency notice**—The loan servicer sends a notice indicating that the homeowner is behind on payments.

- **Notice of Intent to Foreclose** (NOI)—This is a document that the servicer is required to send to the homeowner to begin the foreclosure proceeding. While the NOI is not filed in court, it must be sent to the homeowner at least 45 days before the Order to Docket (OTD) is filed. It must include the following: a loss mitigation application, information about housing counseling, and details about possible alternatives to foreclosure.

- **Loss Mitigation Workout Request**—The homeowner must send this request to apply for relief from the loan servicer.

- **Request for Pre-file Mediation** (optional)—This is sent to the homeowner before any OTD is filed. Pre-file mediation is a voluntary option for the lender. If it is offered, the homeowner can choose not to participate but will still be eligible for post-file mediation. Homeowners who decide to opt in to pre-file mediation can no longer request post-file mediation at a later date. The secured party may pass on a $350 mediation fee to the homeowner.

- **Order to Docket** (OTD)—This is a legal notice filed with the circuit court by the servicer or their attorneys ("substitute trustees") and cannot be filed until the loan is 120 days past due. It cannot be filed sooner than 45 days from the date the homeowner was sent a Notice of Intent to Foreclose.

- **Final Loss Mitigation Affidavit**—If a loss mitigation analysis is completed before the OTD is submitted, the servicer will send a Final Loss Mitigation Affidavit (FLMA) alongside the OTD. If the analysis is not completed, the servicer will send a Preliminary Loss Mitigation Affidavit (PLMA) alongside the OTD. The foreclosure timeline is longer if the homeowner has received a Preliminary Loss Mitigation Affidavit, with the servicer needing to wait at least 28 days after submitting the OTD before providing a Final Loss Mitigation Affidavit. Additionally, the servicer must file the Final Loss Mitigation Affidavit at least 30 days before the foreclosure sale date.

- **Post-file mediation**—This is offered through a foreclosure mediation opt-in form sent by the servicer to the homeowner with the Final Loss Mitigation Affidavit. To participate, the homeowner must fill out the form within 25 days of the date it was mailed. Housing counselors should recommend that the homeowner promptly submit the form, pay the $50 fee, and attend the mediation with legal representation.

- **Loss mitigation documents**—These must be sent to the servicer and to Maryland's Office of Administrative Hearings (OAH) within 20 days of the date of the mediation.

- **Foreclosure sale at the courthouse**—If there is no agreement at the mediation, the servicer can schedule a foreclosure sale of the home within 15 days of the mediation date.

- **Post-sale exceptions to sale**—The homeowner has the right to file optional post-sale exceptions to the sale, though they are very limited in scope. In Maryland, a homeowner may file written exceptions after a foreclosure sale that argues irregularities with the sale process. Exceptions must be filed within 30 days of the filing of the report of sale, and exceptions cannot include arguments about servicing violations by the bank before the sale. The court may nullify the sale if proper notice of the sale did not occur (i.e., the sale was not advertised properly), or if the sale price was not fairly and properly determined.

- **Court ratification of sale—**This allows title to the property to be transferred to a new owner.

- **Auditor's report and ratification of auditor's report**—This report states the amount of the deficiency or surplus after the sale has occurred.

You may decide that your client would benefit from having a copy of the timeline, which is also available in Spanish.

Updated Servicing Standards by the Consumer Financial Protection Bureau

Starting on January 10, 2014, the Consumer Financial Protection Bureau (CFPB) adopted new regulations by the federal government that preempt and update many of Maryland's foreclosure practices. These regulations supplement Maryland's foreclosure laws and require the mortgage companies to review and evaluate alternatives to foreclosure, known as loss mitigation analysis. A few common scenarios to keep in mind:

- **Homeowner submits completed loan modification application before servicer sets a sale date.** If a homeowner submits a completed loan modification application and no foreclosure sale has been scheduled, the servicer must evaluate all loss mitigation options available to the borrower. This evaluation must be conducted by the servicer within 30 days of the servicer's receiving the completed loss mitigation application. The servicer can still schedule a sale date but must cancel the actual sale if the servicer has not completed the evaluation before the sale date.

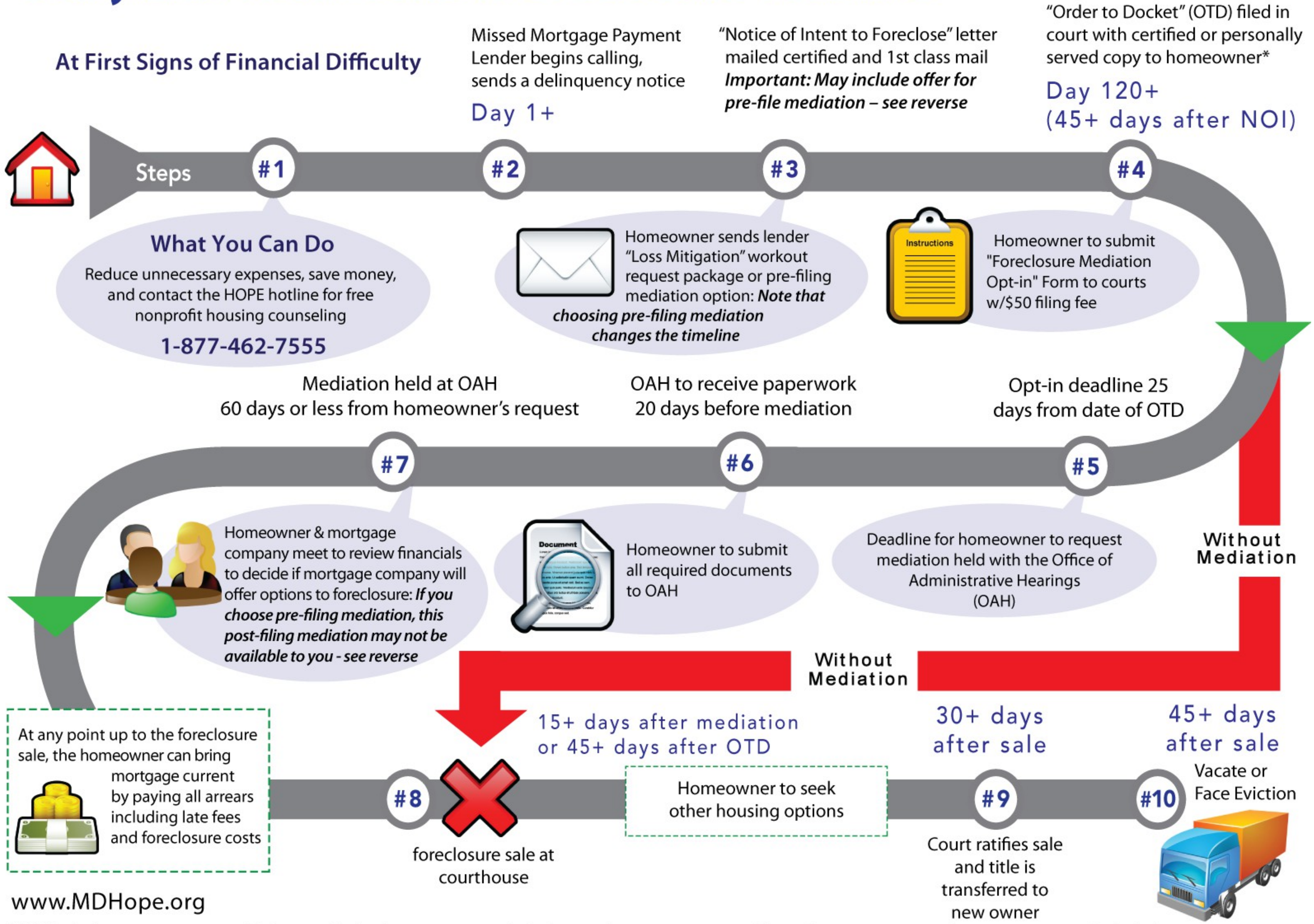
- **Homeowner submits completed loan modification application, but servicer has set a sale date less than 37 days from the date the servicer received the completed application.** Under CFPB regulations, if a foreclosure sale is scheduled less than 37 days from the date the homeowner submits a completed loan modification application, the servicer does not need to evaluate the application and can proceed with the sale.

- **Servicer offers loan modification, and homeowner had submitted a completed application before servicer set a sale date.** If the completed loss mitigation application was received by the servicer before the foreclosure sale was set, or the servicer set the sale date 90 days or more from the date the completed application was received, the servicer must give the borrower at least 14 days from the date the servicer provides the offer to accept or reject it.

- **Servicer denies loan modification application, and homeowner had submitted a completed application before servicer set a sale date.** If the servicer has denied a borrower a loan modification, the borrower must appeal the servicer's denial within 14 days ofwithin 14 days of the servicer's providing written notice of the rejection. The regulation does not provide an appeal right for any other loss mitigation denial (e.g., a short sale). The servicer must have received the completed loss mitigation application 90 days or more before a foreclosure sale.

- **More information**. A guide of the new mortgage servicing rules for homeowners is available on CFPB's website here.

Maryland Homeowner Foreclosure Timeline*



www.MDHope.org

***NOTE:** This document represents a simplified version of the foreclosure process in Maryland without a Preliminary Loss Mitigation Affidavit and some steps may vary. Information is not presented as legal advice. For legal advice, ask your housing counselor for a legal referral.

Foreclosure Intervention Counseling

Foreclosure intervention counseling requires a broad skill set and knowledge base. A good counselor should have an understanding of Maryland foreclosure laws, the mediation process, HAMP guidelines, and proprietary programs available from loan servicers. You should be able to understand a homeowner's mortgage situation, know how to repair credit to create a realistic emergency budget, and be able to assess the value and condition of the home. Listening to the homeowner and the ability to negotiate with servicers on the homeowner's behalf are also important skills.

This section provides an overview of foreclosure intervention counseling. For more detailed information about such counseling and the evaluation of available loss mitigation applications, you may also want to consult the Foreclosure Counseling Standards Guide of the Minnesota Homeownership Center's Homeownership Advisors Network. In deciding on your approach to counseling, it is also critical that you have a firm understanding of your own agency's policies and procedures, which should be available in writing. Agency policy and procedures trump the ones suggested in this section unless they are not in compliance with the National Industry Standards.

Coaching vs. Advocacy

Before starting to see homeowners you need to understand the type of counseling your agency expects. You should determine if your agency uses a coaching model or advocacy model for your foreclosure counseling.

Coaching is empowering your homeowners to work toward a solution on their own. A counselor using the coaching method will develop an Action Plan and budget, review credit, and submit the loan modification package to the lender. The homeowner's role is then to remain in constant contact with the lender and keep the counselor abreast of any new situations. A good coach empowers the homeowners to take responsibility for the outcome of their home, increasing their confidence and the likelihood of their future success.

Advocacy is when the counselor takes a more hands-on approach and negotiates for the homeowner during the entire process. The counselor still develops an Action Plan and budget, reviews credit, and submits the loan modification package to the lender. After the package is submitted, the counselor will call and negotiate and advocate for the homeowner. You participate in more phone calls between the servicer and the homeowner. You are a key figure during negotiations. This in-depth, intensive approach to counseling requires frequent follow-up.

Your agency may also use a hybrid approach and ask you to assess whether an individual homeowner is capable of self-help with coaching or needs a more intensive approach. You should be able to determine your agency's approach by reviewing its policies and procedures, particularly the follow-up expectations, as well as by asking your colleagues.

The following section provides more in-depth information about the five important steps in counseling: 1) Foreclosure Prevention Intake; 2) Pre-counseling Information Session; 3) One-on-One Counseling to Implement the Action Plan; 4) Follow-Up/Continuing Counseling; 5) Closing the File; 6) Post-Resolution Counseling (not offered by all agencies).

Step 1: Foreclosure Prevention Intake

The intake process is an important first step in establishing a relationship with a homeowner who wants help from your agency. The primary function of intake is to collect and organize the baseline data, and then determine the urgency of the homeowner's situation.

You should familiarize yourself with your agency's policies related to intake. These policies should cover the following:

- A standard intake packet and document checklist that meet the National Industry Standards
- A description of eligible intake methodology such as phone, Internet, and/or workshops
- The agency's standard time frame for responding to homeowner calls and scheduling a visit after the completion of the intake packet
- Methodology and timetable for entering homeowner information into the agency's data management system
- Policies and procedures related to homeowners who have already worked with another housing counseling agency
- Methodology of determining whether the homeowner has been a victim of a loan modification scam
- Commitment from homeowner to the counseling process, as well as a way of managing homeowner expectations
- Methodology of handling confidential homeowner information
- Policy for handling homeowners with limited English proficiency
- Referral to Public Justice Center for renters whose landlord is going into foreclosure

Intake Call

Purpose of intake call: During the initial phone call with the homeowner, the goal of the intake specialist or counselor is to compile basic data, determine where the homeowner is on the Maryland Homeowner Foreclosure Timeline, explain the process the agency will use to assist the homeowner, and encourage the homeowner to remain hopeful and calm. One important way that the intake specialist can triage during the initial phone call is to determine if the homeowner has an Order to Docket (OTD) by consulting the Maryland Judiciary Case Search.

Prior to Order to Docket (OTD): If the homeowner does not have an OTD, the goal of the intake specialist is to register the homeowner for the pre-counseling informational event.

After OTD: If the homeowner has an OTD, the goal of the intake specialist is to collect and review all needed paperwork for one-on-one counseling, advise the homeowner on how to apply for mediation, refer to legal partners, and schedule an immediate one-on-one counseling session.

*After the initial phone call, it is a **best practice** for the intake specialist to send an email to the homeowner discussing the next steps and verifying the time, location, agenda, and necessary documents for the next meeting/step.*

Step 2: Pre-counseling Information Session

Purpose: The purpose of the pre-counseling information session is to prepare homeowners for their one-on-one counseling.

Methodology: Your agency may prepare homeowners for counseling through workshops, conference calls, individual meetings, or document collection. The method used for the pre-counseling event is dependent on an agency's capacity and an assessment of the needs of its homeowner population.

Documents Needed for Counseling

Whatever methodology is used, the following information should be reviewed in advance of one-on-one counseling:

1. The Maryland Homeowner Foreclosure Timeline, including key terms and events
2. Possible dispositions or outcomes that will help the homeowner avoid foreclosure
3. Scams
4. All documentation needed for possible dispositions including:
    - Request for Modification and Affidavit
    - Form 710, 4506-T, request for Federal Tax Return transcript
    - Dodd-Frank Certification requirement that person seeking assistance has not been convicted of certain types of illegal mortgage or real estate activities in the last 10 years
    - Income documents
    - Bank statements from the past three months
    - Federal tax returns, all schedules, signed and dated, for the last two years
    - Hardship letter
    - Budget

5. A convenient date to meet. Schedule a one-on-one counseling session or advise the homeowner of the best method to schedule a one-on-one counseling session.

It is important that the homeowner bring all the listed documents to the one-on-one counseling session; otherwise the homeowner and counselor will not be able to meet the goal of applying for one of the possible dispositions during the one-on-one counseling. Success or failure is partially dependent on the homeowner's ability to locate and bring documents to counseling in a timely fashion. *It is a **best practice** to use a check-list system to ensure that the required documents are collected and placed in the homeowner's file.*

Level 1 Documents Needed for Agency Files

National Foreclosure Mitigation Counseling (NFMC), Level 1

The National Foreclosure Mitigation Counseling grant program, which is administered by NeighborWorks America, has established different levels of foreclosure intervention counseling. NFMC agencies receive compensation based on the level of counseling provided per eligible homeowner. Agencies that do not participate in NFMC should also have a checklist of documents that need to be collected before one-on-one counseling. If your agency receives NFMC funding you need to be sure that the following is in a homeowner's file for NFMC Level 1 counseling:

1. Intake Form
2. **Third Party Authorization**—allows the agency to work on behalf of the homeowner. Some lenders require you use their third party authorization, but often your agency can use its own.
3. **Disclosure Form and Privacy Policy**—*required of agencies with an NFMC Grant Agreement, and a* ***best practice*** *for all agencies.* Homeowners should read a disclosure statement, sign an authorization, and have access to the agency's privacy policy. Documented evidence should be included in all counseling files.
4. **Budget**—includes an analysis of the homeowner's mortgage, credit, income, and assets.
5. **Action Plan**—spells out the mutually agreed upon next steps and timetable for completion. The Action Plan should be given to the homeowner within 24 hours of counseling. *It is a* ***best practice*** *to have homeowners sign the form.* For additional information about the components of an Action Plan, review HUD's Homeowner Action Plan: Required Elements and Best Practices.
6. **Making Home Affordable screening**—can include the results of the net present value test.

Methods of Pre-counseling Information Collection

Group Workshops: If your agency has the space and time, it can arrange a group workshop to introduce counselors to homeowners in a face-to-face classroom setting. *The workshops should be held weekly or biweekly (but it is a* ***best practice*** *not to schedule classes at longer intervals than biweekly).* An agency can conduct workshops in a variety of settings including an office, library, school, or local organization. *It is a* ***best practice*** *to hold the group workshops in the evening or on weekends during non-business hours.*

Pros:

- Adult learners often learn best from each other in a group setting.
- Counselors can provide information to multiple homeowners simultaneously.
- Counselors leading the workshops can immediately establish their credibility.
- Homeowners are more likely to show up for their first appointment because of the established personal connection.

Cons:

- Homeowner schedules vary, and it is difficult to satisfy every homeowner's schedule.
- Setup and breakdown can be time-consuming.
- Homeowners may be embarrassed to admit to financial difficulties in a group setting and may be worried about privacy.
- Workshops are not universally accessible to all learning styles or physical disabilities (i.e., PowerPoint does not work for the blind, and certain locations are not handicap accessible).

Telephone or Teleconference Group Workshops: If the agency does not have the available space, time, or capacity, or has a homeowner population that is especially worried about letting others know they are having financial difficulties, telephone group counseling is a good alternative to workshops. The instructor sets up a conference call and notifies homeowners about when and how to participate. *It is a* ***best practice*** *to hold workshops weekly or biweekly but not at longer intervals.* Homeowners who have to wait too long may make bad choices, including seeking out the services of a scam artist who typically can see them right away. Teleconferences should be conducted during lunch hour, in the evening, or on weekends.

Pros:

- Travel time is eliminated for counselors and homeowners.
- The counselor can give all the information once instead of multiple times.
- Homeowners do not need to worry about admitting to financial difficulties in a face-to-face setting.
- It is easier to accommodate homeowners with physical difficulties.

Cons:

- A personal connection is not established.
- Technologically challenged homeowners may not be able to figure out how to teleconference.

Individual Intake Counseling: If the agency has the capacity and time for more handholding, it should consider collecting papers or conducting a one-on-one counseling session right away. This two-part method requires a lot of time and energy on the part of the counselor. The counselor will be able to work more in-depth but with fewer homeowners. Some agencies do not move homeowners out of intake until their paperwork is collected. Some agencies will also send a counselor to meet new homeowners at a neutral public location to increase the homeowner's comfort with counseling.

Pros:

- Personal connection is established.
- Paperwork is collected and organized before in-depth counseling starts.
- NFMC Level 1 counseling is easier to achieve because the meeting is face-to-face.
- Homeowners might have the perception of receiving more personalized service. Those agencies that collect paperwork before one-on-one counseling guarantee they will have the paperwork during the first counseling session.
- Homeowners who are ashamed of being in financial trouble can have more privacy, especially if counselors are able to meet them in a neutral public location.

Cons:

- More time is spent explaining the same information to homeowners.
- More paperwork is received but not completed.
- Because of incomplete paperwork, homeowners do not receive counseling and the agency has fewer outcomes.

Scams

During the intake process, agencies should determine if homeowners have been victims of scams. Signs of scams include:

- Homeowners who have been charged a fee for anything other than a credit check
- Homeowners who were guaranteed specific results such as 2 percent mortgages
- Homeowners who have been asked to sign over the house deed
- Homeowners who have been asked to pay a third party
- Homeowners who have been told, "I am the only person who can help you"

In Maryland, it is illegal for credit services businesses and foreclosure consultants to charge up-front fees. Despite efforts to educate homeowners about the dangers of scams, by the time homeowners reach a housing counseling agency, they may already have been victimized. Additional information about loan modification scams can be found at Loan Modification Scam Alert.

Agencies should help homeowners report scams. It is important that counselors report scams to help build a case against these bad actors. There are several state and federal agencies that collect information on scams. Information on how and where to report scams is available on the Counselor Portal.

Step 3: One-on-One Counseling to Implement Action Plan

Purpose: The purpose of the one-on-one counseling session is to direct, coach, and counsel homeowners on their individual needs and achievable goals related to their mortgage delinquency.

Methodology: To be effective, you need to analyze the homeowners' income, mortgage terms, net assets, and preferences, and review their current financial behaviors and hardships. As part of one-on-one counseling, you should create Action Plans, establish a budget, inform homeowners about their options, coach them on necessary changes to financial behaviors/habits, and guide them on communication strategies with mortgage servicers. As part of this session, it is important to establish realistic outcome expectations.

You should work with the homeowner to prepare a loss mitigation application and then submit the application on the homeowner's behalf. *It is a **best practice** to collect information about each servicer's loss mitigation process and, whenever possible, develop relationships with the staff of major servicers.* To determine if the servicer has committed any violations, you should be familiar with the HAMP servicing guidelines as well as the specific requirements of the selected loss mitigation option. Resources are available to help you resolve issues if you determine that the servicer is not following the guidelines.

During the one-on-one counseling session, it is important to help homeowners determine whether they are trying to stay in their home, whether staying is realistic, or whether they are transitioning out of the home.

Retaining the home: If the homeowner is financially healthy enough to retain the home, you should evaluate what options are most likely to allow the homeowner to stay and then send to the servicer the full completed application for that option plus the required documentation. A more in-depth discussion of these options is included in Foreclosure Counseling Standards Guide of the Minnesota Homeownership Center's Homeownership Advisors Network. HUD fact sheets on special forbearance for unemployed homeowners, loan modifications, and FHA HAMP may be helpful. The completed homeowner loss mitigation application can be sent via RX Premium Portal, fax, or email. The package should contain all required items and be sent in a timely manner.

Transitioning from the house: If the homeowners are transitioning from the home, and the home is worth less than the outstanding mortgage(s), you should refer them to a Certified Distressed Property Expert (CDPE) or Short Sale Expert (SSE) real estate agent for a short sale. You may want to provide them with this HUD fact sheet on short sales. For homes that have equity, you can refer the homeowner to a traditional real estate agent.

You should continue to stay in contact with the homeowner and the real estate agent while the house is on the market. After the home has been on the market for 90–120 days, you should provide information about deed in lieu of foreclosure. Additional information on deed in lieu is available from this HUD fact sheet. Communication remains important while the home is on the market, in case the attorney for the mortgage servicer sends a Preliminary Loss Mitigation Affidavit via the OTD, or a Final Loss Mitigation Affidavit. If this occurs, you should prepare the homeowner for mediation. If you do not feel capable of advising homeowners on mediation or deed in lieu of foreclosure, you can refer them to a legal service provider.

You can help homeowners prepare the necessary documents that must be submitted 20 days before mediation. The Office of Administrative Hearings (OAH) provides the homeowner with a list of the required documents when it sends out the date of the scheduled mediation. You should inform the homeowner that you, as counselor, are allowed to attend the mediation session (unless the agency has a policy prohibiting this) but are not allowed to represent the homeowner—only a lawyer can do that.

If you are an experienced counselor, you should consider attending the mediation, as you are likely the person most familiar with the case. The only document you can sign, however, is the one indicating that you attended the mediation. Less experienced counselors should be certain to connect the homeowner with a legal service provider. Even if the homeowner has legal representation, you may want to attend as well. There is an additional section of the Guide devoted to an explanation of the Maryland Foreclosure Mediation Program.

Retaining the Home or Transitioning Out

The decision to stay or transition out should be made after reviewing the homeowner's credit report, application, income documentation (including pay stubs, Social Security, pension, rental income, or self-employment income), bank statements, federal tax returns, legal notices from the lender's attorney, and any other relevant documentation.

Credit report review: You should pull the homeowners' credit reports (with their permission) to understand their financial situation as well as to know what the mortgage servicers will see when they order a credit report.

- Use the credit report to identify past spending problems or financial problems. Coach homeowners on a long-term resolution of problems and include action items in the Action Plan.
- Discuss the components of credit history: payment history, balances, length of history, new credit, and types of credit used.
- Develop long-term financial goals to pay off credit card bills.
- Discuss alternative methods of increasing a credit score by depositing money into a national bank or credit union and then borrowing against it.
- Educate homeowners on store cards/gas cards and their effect on the homeowner's credit scores.
- Discuss how homeowners can get current using an emergency budget that you help them develop and how they can stay current using a regular budget that you help them develop.
- Refer homeowners who need more long-term help to credit counseling such as Credit Counseling Service of Maryland and Delaware.
- Refer homeowner who may want to pursue bankruptcy to legal service provider.

Hardship letter: Homeowners' applications for loss mitigation need to include a hardship letter. This letter allows the homeowner to explain to the servicer the causes of financial distress. The letter should not be confrontational. Instead, it should present a timeline of events that led up to the mortgage default. The letter should be typed and between half a page to one page long. You should tell the homeowner to include the following information:

1. Contact information: homeowner's name, address, account number, and phone number.
2. Cause of delinquency: a brief description of why the homeowner fell behind on the mortgage (or will fall behind if the homeowner is anticipating default). This description should be provided in one to three detailed, comprehensive sentences focusing on finances. *It is a **best practice** not to include any information concerning medical history, children, or personal details, unless it is directly related to the mortgage delinquency.*
3. Resolution of delinquency: a brief description of how the homeowner is resolving the issues. For example: "I will increase my income by getting a second job, renting a room, working overtime, and/or decrease expenses by cutting back on certain items."
4. Desired action of servicer: a brief description of the action the homeowner wants the mortgage servicer to take. These actions may include mortgage modification, forbearance, repayment plan, short sale, deed in lieu.

Income documentation: When working with homeowners you will want to review their income documentation to determine their total gross income. The following forms of income documentation will be required by the servicer.

1. Pay stubs from the last 30 days
2. Bank statements from the last three months
3. Federal tax returns for the past two years (all pages/all schedules) signed and dated
4. Social Security awards letter and three months of bank statements with deposits matching the awards letter, if applicable
5. Pension awards letter and three months of bank statements with deposits matching the awards letter, if applicable
6. Leases and three months of bank statements with deposits matching the leases for rental income, if applicable
7. Court or social services awards letter/court decree and three months of bank statements with deposits matching the letter/decree for child support or foster care support, if applicable

If the homeowner is not depositing his/her Social Security, pension, rental income, or childcare checks into a bank account every month, you should advise them to start immediately. Make this action part of their income Action Plan.

Mortgage statement: You will also want to review the homeowner's mortgage statement to determine and analyze the affordability of the current payment, understand the type of loan and interest rate, identify the investor, and assess the escrow information. If the homeowner does not escrow, the counselor will need to obtain a copy of the Real Estate Tax Statement and Homeowner's Insurance (HOI) Declaration to determine total housing cost, principal, interest, taxes, and insurance.

Utility bill: You should obtain a copy of one of the homeowner's utility bills because the servicer might use the utility bill to verify that the property is the homeowner's primary residence.

Budget: After getting an understanding of the homeowner's revenue and expenses, you should help the homeowner develop an emergency budget that prioritizes the house first and then all the other expenses. The servicer/lender will use the budget as a main factor to determine if the homeowner can afford the home. The budget should result in the mortgage payment, principal, interest, taxes, and insurance equaling 31 percent or less of the total gross income. All the numbers in the budget should be verifiable from credible sources.

Checking the net present value: After all the documents are submitted and reviewed, you should run the file through the www.checkmynpv.com tool. CheckMyNPV.com is a free tool provided by the U.S. Department of the Treasury, and the Department of Housing and Urban Development. CheckMyNPV.com is designed to help you conduct a net present value (NPV) evaluation of a mortgage for HAMP. CheckMyNPV.com can also be used to confirm information after a homeowner has been denied a HAMP modification on the basis of the NPV result.

Determine if the homeowner is a good candidate for SUN Initiative: If the homeowner wants to stay, is underwater, has a job, and has an interest rate of 5.5 percent or higher, you should make them aware of the SUN initiative, which is available only in Maryland and Massachusetts. Under the SUN (Stabilizing Urban Neighborhoods) program, an intermediary buys from the mortgage company at a distressed price a home that is in or at risk of foreclosure and resells it at a significant discount to the current homeowner.

Submitting the file: You will submit the full, completed loan modification application to the servicer or submit it on the homeowner's behalf. Files should be submitted through the RX portal, a special portal in development by Maryland DHCD, or the HOPE Loan Portal for participating lenders. For nonparticipating lenders, you will need to email or fax the completed application package to the proper department. You should use the number on the homeowner's mortgage statement and call to verify the proper fax number or email. This step is rarely necessary as most servicers are currently available through one of the e-portals.

Evaluate Response from Servicer

Your job as a counselor is not finished when the application has been submitted. You need to help your homeowner get a response from the servicer in a timely fashion, understand what is being offered, and determine if this is a sustainable option. You also need to correct any errors in the submission as well as to monitor whether the servicer is complying with the CFPB's servicer standards.

Trial

If the servicer offers different terms than originally requested, you should help the homeowner determine if the proposed terms will be sustainable. Modifications are typically offered as three-month trials. You should advise the homeowner to continue to make payments on the existing mortgage until the final modification paperwork is signed by both parties. *It is a **best practice** for the homeowner to call the servicer once a week to verify that payments and additional paperwork are received and credited.*

If the loan modification request is denied, you should contact the servicer for additional clarification about the reasons for the denial. Loan modification denials typically fall into one of two categories: too much income or not enough income.

Too much income: If the mortgage servicer says the homeowner has too much income, you should negotiate terms, such as a modification, repayment, or reinstatement, to bring the mortgage current. The budget should help the homeowners prioritize mortgage payments. If the homeowners are unwilling to pay the mortgage first, you should advise them on a short sale. *It is a **best practice** to include one to three items in the Action Plan that the homeowner should pay first.*

In addition to highlighting priority expenditures and ways to reduce expenses, it is also important to include in the Action Plan items to increase income:

1. Work overtime, second job, side job.
2. Develop a home business.
3. Rent out a room to a relative or friend or contact St. Ambrose's Home Sharing Program to get help locating a person to rent a room in your home.

Not enough income: If the mortgage servicer says the homeowner does not have enough income to afford the home, even with the proposed loan modification, you should confirm the servicer's calculation and, if correct, help the homeowner negotiate for a more significant payment modification, short sale, or deed in lieu of foreclosure. You should help him/her develop an emergency budget that will realistically get them through the next one to three months, until him/her are able to increase income or lower expenses.

Examples of responses to servicer denial:

1. Prioritize needs.
2. Cut back on nonessentials.
3. Determine whether the identified issue can be fixed and the file resubmitted or whether the homeowner should pursue transition options, starting with regular sale, short sale, and then deed in lieu of foreclosure.
4. Determine whether the servicer has followed servicing rules. The servicing standards require that the homeowner be considered for all programs at the same time, and that any denial must list the specific reason for the denial, such as an investor guideline or failure to pass the net present value (NPV) test. If servicing rules have not been followed, report to appropriate agency.
5. Determine whether the denial was in error, and if so, forward the file to the Maryland Housing Counselors Network escalation team. Send only files that pass the NPV test and are complete, and that the servicer would have no **good** reason for denial. You can forward the file via email to escalations@thenetworkmaryland.org. Another way to deal with servicer noncompliance is to submit a notice of error to the servicer per the CFPB requirements. Servicers cannot report a mortgage as delinquent if an error resolution is pending. To learn more about how to file a mortgage-related complaint with a servicer, go to: http://www.homeownerfinance.gov/complaint/#mortgage

Step 4: Follow-up/Continuing Counseling

Purpose: To ensure that progress doesn't stall because of inadequate communication between the homeowner and the servicer, and between you and the homeowner. Another reason is to empower the homeowner to communicate effectively with the servicer. *A **best practice** is to ask the homeowner to call the servicer once a week to determine the status of the loan modification request and for the homeowner to track this communication in a log.*

Methodology: You should provide the homeowner with guidance on what to ask during the weekly calls to the servicer. *A **best practice** is for the homeowner to ask the following questions:*

1. What additional paperwork is needed for the loan modification review?
2. What is the status of the review?
3. When will the file be reviewed?

You should ask the homeowner to provide you with any additional paperwork requested by the servicer. *It is a **best practice** for you to submit this paperwork for your homeowner so you can track the status of the application.* If the homeowner is not calling the servicer once a week, or having difficulty connecting with a single point of contact, you should arrange a conference call with the homeowner and the servicer.

Your agency's policy should provide you with information about the expected amount of follow-up that you should provide. *It is a **best practice** to communicate with homeowners by email or phone once or twice a month.*

The purpose of follow-up is to:

- Improve the homeowner’s financial habits by reinforcing the Action Plan and emergency budget.
- Review communications with the mortgage servicer either by looking over the homeowner’s communication log or by providing the homeowner with an update on the status of the request submitted through the HOPE Loan Portal.
- Stress the importance of continuing to make payments.

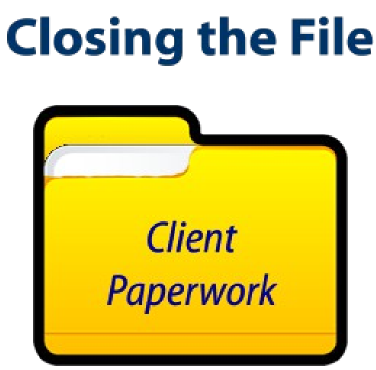
Step 5: Closing the File

Purpose: To allow the agency to get paid for the services provided and to document outcomes to funders and other stakeholders.

Methodology: You should review your agency’s policy to determine who is responsible for closeout. The person in charge of file closeout should email or mail a letter to the homeowner confirming the outcome, asking for feedback on the homeowner’s counseling experience, and asking if the homeowner is willing to participate in agency marketing activities. A file is closed when there is an outcome recorded in the client management system (CMS) and when there is a paper file that documents the outcome.

A file should be terminated when the homeowner’s housing issue is resolved, the homeowner is no longer responsive, the homeowner refuses to follow the Action Plan, or the homeowner is getting exclusive help from another agency.

*A **best practice** is for the agency to have a file closeout protocol.* This protocol should include:



- Established time period for frequency of file review and updating. *A **best practice** is to update the file every 30 days.*
- Established timeframe for closing a case owing to the length of inactivity. *A **best practice** is after 90 days.* Your agency should have a standard closeout letter.
- A system for entering the outcome (as well as all other homeowner information) in the client management system. This system should be consistent within the agency to avoid duplicate records.
- A policy for inputting homeowners who return to counseling—as either new homeowners or continuing homeowners—after the file has been closed.
- A sample letter that is used to inform the homeowner that the case has been closed.

Step 6: Post-Resolution Counseling

Purpose: To provide follow-up counseling to help the homeowner avoid re-default and rebuild credit. As of September 2013, the federal government requires that certain classes of servicers ensure that their homeowners are receiving post-modification counseling.

Your agency may offer post-resolution counseling, which is an intensive, long-term financial coaching program. Such programs are typically offered in group settings and work on avoiding re-default, rebuilding credit, and developing emergency savings.

Another post-resolution resource to which you may want to refer homeowners is Civil Justice’s foreclosure recovery program, which provides guidance to Maryland residents who have experienced a foreclosure event, regardless of whether they have stayed in the home or moved on. Eligible individuals are provided with an opportunity to meet with an attorney for a free 90-minute consultation. At the end of the session, the participant receives a checklist with information and advice to implement in order to move forward.

Establishing Referral Networks and Partnerships

Throughout the one-on-one counseling process, you may discover that the homeowner would benefit from resources available from another agency. A good counselor will be familiar with what is available and appropriate for the homeowners with whom you are working. In fact, the National Industry Standards call for you to have a referral network. *A **best practice** is for an agency to develop an individualized list of referral partners appropriate to that agency and location.* If your agency does not have a referral list you should develop your own.

The following list is a good starting place for a referral network:

1. Adult Protective Services, for anyone who is suffering from abuse: (410) 361-5000
2. Apartment search for state of Maryland, for help locating new housing: (877) 428-8844
3. Baltimore Neighborhoods Inc. (BNI), for fair housing complaints and to help with homeowners who are victims of housing discrimination: (410) 243-4468.
4. FIRN, for help with translation services: (888) 399-3476.
5. Green and Healthy Homes, for rehab loans to remove lead if a person has a child living in home: (410) 534-6447.
6. Just Advice, for extremely low-cost legal advice provided by the University of Maryland Law School: (410) 929-4809 or email: justadvice@law.umaryland.edu
7. Maryland Community Services Locator, for other services.
8. Maryland CASH Campaign, for financial services geared toward low- and moderate-income Maryland residents.
9. The escalation program at the Maryland Housing Counselors Network, for help with servicers who have taken more than 120 days to respond or for help with an unwarranted denial email: escalations@thenetworkmaryland.org.
10. DHCD-supported Maryland housing counseling agencies, if your agency does not have the capacity to serve a homeowner, because of language barriers, for example.
11. Maryland property tax credits, to help reduce low- and moderate-income homeowner expenses.
12. Maryland weatherization program, for help with high utility bills caused by energy inefficiencies, such as leaks in the home: (800) 638-7781.

Maryland Foreclosure Mediation

As a counselor, you need to understand the Maryland mediation program. Effective July 1, 2010, Maryland real property law requires that Maryland homeowners be offered the opportunity for mediation. The purpose of foreclosure mediation is to encourage alternatives to foreclosure through a third-party facilitated discussion between homeowners and mortgage company representatives.

Mediation Fees

The homeowner needs to pay a $50 refundable fee for post-file mediation, unless the homeowner qualifies for a waiver, which is available only in very limited circumstances. (The lender also has to pay $300 at the Order to Docket stage.) For pre-file mediation, the secured party must pay $350, which may be passed on to the homeowner.

Difference between Pre- and Post-file Mediation

You should be aware that mediation may occur at two different stages. Lenders **may,** but are not required to, offer **pre-file** mediation, which provides the homeowner with the chance to sit down with a mortgage company representative before an Order to Docket has been entered. You will know if pre-file mediation is an option if a notice is included with the Notice of Intent to Foreclose. As of June 2014, the vast majority of foreclosure notices did not offer homeowners the chance to participate in pre-file mediation.

Post-file mediation is mediation after a foreclosure action via the Order to Docket is filed in court. Maryland law **requires** that post-file mediation be offered as an option, unless the homeowner has already participated in pre-file mediation. The form to request post-file mediation is included in the paperwork provided to the homeowner after the case has been filed with the courts.

Whether pre- or post-file mediation is the best fit for the homeowners depends on the short-term prospects for their financial situation. If it is likely to remain the same or worsen, pre-file mediation may be the better choice because their situation will be resolved sooner and the amount of their deficiency will be smaller. Homeowners who participate in pre-file mediation are not eligible to participate in post-file mediation. If a homeowner's financial situation looks as if it will improve in the short term, waiting for post-file mediation may be the better option. It is important to note that each homeowner's situation is unique and should be treated on a case-by-case basis.

Pre-file Mediation

1. Mortgage company offers pre-file mediation option in the paperwork provided to the homeowner. Homeowner may also request pre-file mediation if it is not offered, but the mortgage company is not required to honor this request.
2. Homeowner completes mandatory pre-file mediation housing counseling, even if he/she has had counseling before. Counselor completes housing counseling certification form, which is included in the mediation package.
3. Homeowner completes request for mediation form, which is provided, if offered, with Notice of Intent to Foreclose, and sends a copy to the mortgage company's foreclosure attorney.
4. The mortgage company has five business days after receipt of a pre-file mediation request to notify the Office of Administrative Hearings.
5. Office of Administrative Hearings schedules mediation within 60 days of receipt of request from circuit court.
6. Foreclosure attorney and homeowner or homeowner's representative exchange documents at least 20 days prior to mediation. Counselors should be aware that mediation can occur without advance document exchange, but documents are needed to complete a workout.
7. If an agreement is reached during the session, mediator drafts a formal agreement to be signed by both parties prior to leaving mediation session. If no agreement is reached, you should educate the homeowner about next steps.

Post-file Mediation

1. The mortgage company provides homeowner with Final Loss Mitigation Affidavit.
2. Homeowner who lives in the home as a primary residence and has not participated in pre-file mediation pays nonrefundable $50 fee, completes the request for mediation form within 25 days of mailing date of Final Loss Mitigation Affidavit, and sends a copy to the mortgage company's foreclosure attorney.
3. Circuit court receives request for mediation and forwards it to the Office of Administrative Hearings.
4. Office of Administrative Hearings schedules mediation within 60 days of receipt of request from circuit court.
5. Mortgage company's attorney and homeowner/homeowner representative exchange documents at least 20 days prior to mediation. Counselors should be aware that mediation can occur without advance document exchange, but documents are needed to complete a workout.
6. If agreement is reached, mediator drafts agreement to be signed by both parties prior to leaving mediation session. If an agreement is not reached, the counselor should coach the homeowner on next steps.

Getting Help from Legal Service Providers

You need to understand how and when to connect with legal service providers unless your agency has in-house legal services. Information on available Maryland legal service providers, as well as the income guidelines for their services, can be found here.

To help housing counselors determine whether a referral to legal services is warranted, Maryland DHCD has developed the following guidance. Counselors should refer homeowners to legal services when any one of the following has occurred:

- An Order to Docket (OTD) has been filed.
- A sale date has been set.
- The homeowner is considering filing for bankruptcy.
- The homeowner has opted into mediation and has no representation, formal or informal, planned.
- The homeowner is on the deed but not on the loan or vice versa (the person paying is not on the mortgage).
- The homeowner is divorced or separated, and both parties are still on the mortgage.
- The homeowner has already defaulted on the first modification.
- The homeowner does not recognize the servicer of the loan as the company to which he or she made the mortgage payment prior to delinquency.
- The homeowner is elderly and/or critically ill.
- The homeowner is elderly and has a reverse mortgage.
- The client is a renter and is facing eviction.

- The home was sold in the last 30 days, but the homeowner has questions about the notice of the sale and is interested in filing post-sale exceptions.

Getting help from legal services does not mean that you have to stop working with the homeowner. Civil Justice's Of Counsel Program provides in-person and online legal information for housing counselors throughout the state. The Of Counsel Panel Program operates by 1) bringing Civil Justice Network attorneys to in-person roundtable meetings with housing counselors, and 2) having Civil Justice Network attorneys and staff respond to questions posted on a closed Listserv for housing counselors. Responses are posted within 48 hours. Civil Justice operates different Listservs for different regions of the state. By participating in the Listserv, counselors not only benefit from the answers to the questions they pose, they also benefit by reading the questions and answers submitted by their colleagues.

Roles of Parties in Mediation

As a counselor, you must understand the roles of parties and their relationship to each other in foreclosure mediation.

Counselors

Counselors provide information to homeowners about their right to mediation, educate them about pre- and post-file mediation, and help them prepare for mediation. Although counselors may accompany homeowners to mediation, you should make sure that homeowners are aware of no- or low-cost legal services. *Particularly for inexperienced counselors, it is a **best practice** to encourage and recommend pro-bono and low-bono attorney services to the homeowners as attorneys may officially represent homeowners during mediation.* You may still attend the mediation session, even if the homeowner is also working with a legal service provider. In most instances, you are the person who knows the most about a homeowner's individual circumstances and can explain all the steps you and the homeowner have taken to improve the homeowner's financial situation.

Mortgage Servicers (Lenders)

Mortgage servicers must evaluate homeowners for loan modifications if they want to retain their home. If after reviewing a loss mitigation application, the mortgage servicer wants to proceed with a foreclosure, the servicer must file an Order to Docket with the court and provide the homeowner with a Request for Foreclosure Mediation form. At the mediation, the servicer is required to send a representative who is able to make decisions about the loan modification request.

Homeowners

Homeowners must contact their lenders and be responsive to any applications for loan modifications or other alternatives to foreclosure that the lender offers. If the home facing foreclosure is a homeowner's principal residence, the homeowner is offered the opportunity to participate in a mediation session. Homeowners who wish to participate in mediation have 25 days from the date they received the Final Loss Mitigation Affidavit to complete the Request for Foreclosure Mediation form and file it with the circuit court in the city or county where the home is located. Homeowners must pay a nonrefundable $50 fee when they formally file this request for mediation, but this fee can be waived for eligible low-income homeowners upon completing a Request for Waiver of Filing Fee.

Substitute Trustees (Attorneys for the Mortgage Servicers)

Mortgage servicers hire foreclosure attorneys to proceed with the foreclosure sale on behalf of their interests. These foreclosure attorneys are often called substitute trustees, and the homeowners may need to be educated to understand that these substitute trustees may be sending important documents to the homeowner on behalf of the bank. It is often helpful to contact a substitute trustee to find out the status of the foreclosure (Has a sale date been set? Has the servicer instructed the substitute trustee to pause the foreclosure process?), though the substitute trustee may require you to submit a Third Party Authorization form with your client's signature before he/she agrees to speak with you.

Mediators

In Maryland, administrative law judges serve as mediators and third party neutral facilitators during mediation. Mediators do not decide the case; instead, they encourage parties to discuss alternatives to foreclosure.

Legal Service Providers

Legal service providers advise homeowners of their right to mediation, educate them about pre- and post-file mediation, help them prepare for mediation, and can represent them during the mediation hearing. Although certain legal organizations offer free legal representation at mediations based on income eligibility, there is typically a fee for legal service representation, in addition to the $50 homeowner post-file mediation fee.

Resources to Help Counselors

Earlier in the Guide, you were provided with agencies that might help you with issues facing an individual homeowner. This section includes agencies that provide training and other resources to counselors and counseling agencies.

Maryland Partners

Maryland Department of Housing and Community Development (DHCD) operates the Maryland HOPE hotline **(877-462-7555**), a major source of referrals for counseling organizations; provides funding to counseling organizations; and provides resources for housing counselors**.**

Maryland Department of Labor, Licensing and Regulation (DLLR, pronounced "dollar") provides assistance to homeowners by investigating complaints of questionable practices involving the financial institutions under its supervision (or related institutions). The Office of the Commissioner of Financial Regulation, a division of DLLR, is where homeowners can submit a complaint related to the foreclosure process. The Financial Regulation Division also wrote the regulations for Maryland's mediation law and has created foreclosure prevention resources and information. General inquiries to DLLR regarding foreclosure can be directed to ForeclosureOutreach@dllr.state.md.us.

Maryland Housing Counselors Network is a membership organization that supports the efforts of nonprofit housing counselors and housing agencies. *The Network provides training and networking opportunities and disseminates information about **best practices**.* Network roundtable meetings provide counselors with an opportunity to connect and learn from their peers.

Office of Administrative Hearings (OAH) is an independent Maryland agency where an administrative law judge (ALJ) hears cases when a party disagrees with the action of another state agency. In addition to hearing cases, all ALJs are certified mediators who regularly conduct mediations in foreclosure and other cases.

Office of the Attorney General, Homeowner Protection Division, provides services to homeowners to help resolve complaints against businesses, including mortgage-related businesses. The division can also provide information about complaints filed against businesses and determine if a business is properly registered. To file a complaint go to http://www.oag.state.md.us/Homeowner/complaint.htm.

National Partners

Consumer Financial Protection Bureau (CFPB) is the agency responsible for the enforcement of the new mortgage servicing standards, known as Regulation Z. Counselors and homeowners can file complaints with CFPB. In addition, CFPB has set up a special email address where counselors can report systemic problems with compliance or repeated issues with an individual servicer. This address is cfpb_servicingtips@cfpb.gov. Counselors encountering a servicer who is not complying with the mortgage servicing standards can submit an error resolution notice. Servicers are required to meet certain procedural requirements related to written information requests or error complaints. Servicers cannot report a mortgage as delinquent if an error resolution is pending. To file a mortgage-related complaint, go to: http://www.homeownerfinance.gov/complaint/#mortgage.

National Housing Resource Center is an advocate for the nonprofit housing counseling industry. Counselors can join their Listservs and visit the website for resources and tools for housing counselors.

NeighborWorks America provides funding to support foreclosure counseling through the National Foreclosure Mitigation Counseling program; helps train counselors through online, place-based, and in-person trainings; has established national foreclosure intervention standards; and supports a loan modification scam alert campaign.

U.S. Department of Housing and Urban Development (HUD), Office of Housing Counseling, issues an annual Notice of Funds Availability (NOFA) for housing counseling, approves housing counseling agencies, and has a proposed rule related to the certification of individual housing counselors.

U.S. Department of the Treasury administers the Making Home Affordable program. Programs available through Making Home Affordable include the HAMP loan modification program and the HAFA smooth transition program.

Data and Reporting

As a housing counselor, you may not have any responsibility for agency-wide reporting and are only responsible for entering and reporting outcomes for your individual homeowners. It is useful and important, however, for you to understand why this data is important.

The National Industry Standards require the utilization of an electronic client management system for collecting and reporting data. While an Excel spreadsheet is acceptable for meeting the benchmark, a computerized client management system (CMS) is preferred. In addition to adherence to the National Industry Standards, HUD began requiring client management systems in 2008. HUD requires that all HUD-approved counseling agencies use a CMS that interfaces with HUD's Housing Counseling System (HCS).

The data can be used to:

- Describe the impact of the agency's work in specific neighborhoods.
- Analyze foreclosure trends.
- Determine changes in the types of agency homeowners.
- Review the caseloads of individual agency counselors.

You should understand your agency's data and reporting system and work to make sure that the data you enter is consistent with agency policies. You or someone in your agency should be responsible for entering data about the following:

1. Homeowner information collected at intake
2. Homeowner information collected during pre-counseling information
3. Homeowner information collected during one-on-one counseling
4. Indication that loss mitigation application has been submitted
5. Outcome (your agency may characterize outcomes differently, so you should refer to your agency's policy as well)
   a. Closed — Homeowner withdraws, disappears, or does not follow directions.
   b. Closed—Homeowner housing achieved, self-correction (i.e., forbearance, repayment, reinstatement)
   c. Closed—Modification achieved: Homeowner receives a permanent modification from servicer. Copy of modification must be in the file.
   d. Closed—Short sale: Homeowner sold home via short sale.
   e. Closed—Deed in lieu: Homeowner transferred deed of home to lender via deed in lieu.
   f. Closed—Bankruptcy: Homeowner filed for bankruptcy.
   g. Closed—Home sold: Home is sold; not a short sale.
   h. Closed—Legal: A homeowner referral to non-bankruptcy legal service that closes the file. Also use for referral to social service.
   i. Closed—Foreclosure

You should try to avoid common errors that were identified by the Baltimore Homeownership Preservation Coalition:

1. Multiple records or case numbers within an agency for the same homeowner name and/or address because of inconsistent intake policies.
2. Open files that should be closed out owing to inactivity, the absence of a closeout policy, or a failure to follow that policy.
3. Conflicting information in the file, making the status of the counseling relationship unclear, such as listing the case as inactive but also reporting outcomes.

Appendix A: Maryland Foreclosure and Mediation Glossary

Adjustable-Rate Mortgage (ARM): a mortgage loan with an interest rate that can change, usually in response to LIBOR, the average interest rate estimated by leading banks in London, or Treasury bill rates.

Balloon Mortgage: a mortgage loan with initially low-interest payments but that requires one large payment due upon maturity (for example, at the end of five or seven years).

"Cash for Keys": a deal a lender may make with a resident (homeowner or renter). The resident gets a cash settlement in exchange for vacating the foreclosed home and leaving it in "broom swept" condition. Homeowners who receive a "cash for keys" offer should be strongly advised to contact an attorney or housing counselor.

Convertible ARM: an adjustable-rate mortgage loan that can be converted into a fixed-rate mortgage during a certain time period.

Debt-to-Income (DTI): a calculation frequently used by mortgage companies when qualifying borrowers for a mortgage or a workout solution to resolve delinquency. It is calculated by comparing the borrowers' monthly mortgage payment to their gross monthly income.

Deed: a document that legally transfers ownership of property from one person to another. The deed is recorded on public record with the property description and the owner's signature.

Deed in Lieu: a way of avoiding foreclosure ('in lieu' of foreclosure) on a piece of property. The deed is given to the lender to fulfill the obligation to repay the debt; this process does not allow the borrower to remain in the house but helps avoid the costs, time, and effort associated with foreclosure.

Default: the description for a loan that has one or more terms that have not been honored, typically the failure to make timely monthly mortgage payments. A loan is considered in default when payment has not been made after 60 to 90 days. Once in default, the lender can exercise legal rights, defined in the contract, to begin foreclosure proceedings.

Deficiency Balance: the difference between what a home sold for and the remaining mortgage balance. The mortgage company may require payment of the deficiency balance. Maryland allows lenders to pursue deficiency judgments for three years.

Deferred Payments: payments that are authorized to be postponed as part of a workout process to avoid foreclosure.

Delinquency: failure of a borrower to make timely mortgage payments under a loan agreement. Generally, after 15 days a late fee is assessed. The date of the start of the delinquency is based on the first day after a payment due date.

Equity: an owner's financial interest in a property, calculated by subtracting the amount still owed on the mortgage loan(s) from the fair market value of the property.

Escrow: an account (held by the mortgage company) used to hold homeowner payments toward taxes and insurance of a home. A periodic review of escrow accounts is made to make sure that there are sufficient funds to pay the taxes and insurance on a home when they are due.

Fixed-Rate Mortgage: a mortgage loan with a constant interest rate for the life of the loan.

Forbearance: a loss mitigation option where the lender agrees not to take legal action if a homeowner arranges to pay the amount owed on a mortgage by a specified date. This is a temporary option, and monthly payments may increase after the forbearance period is over.

Foreclosure: a legal process in which mortgaged property is sold to pay the loan of the defaulting borrower. Foreclosures can also occur on property with delinquent taxes, water bills, or condominium association fees.

Hardship: the reason why a homeowner is having trouble making mortgage payments. A hardship may be short-term (less than six months) or long-term. Housing counselors often help homeowners prepare hardship letters to explain any hardship they are experiencing.

Home Affordable Modification Program (HAMP): part of the government's Making Home Affordable Program that provides homeowners an opportunity to modify their loan to more affordable monthly payments.

Home Affordable Refinance Program (HARP): part of the government's Making Home Affordable Program that provides homeowners an opportunity to refinance their loan to more affordable monthly payments—even if they have limited or no equity in their home.

Housing Counseling Agency: an agency that provides counseling and assistance to individuals on a variety of issues, including loan default, fair housing, and home purchase.

Interest-Only Mortgage: a mortgage that only requires the homeowner to pay interest (and not principal) on the loan for a specified amount of time.

Investment Property: a property not considered to be a primary residence.

Investor: the entity that actually "owns" a mortgage. The loss mitigation options a servicer can offer are restricted by agreements with investors. All workout programs have to be approved by the investor. Some servicers have models in place to ensure they only offer programs within the investors' guidelines.

Loan-to-Value (LTV): a calculation frequently used by mortgage companies when qualifying borrowers for a mortgage. It is calculated by dividing the mortgage balance by the home's market value.

Loss Mitigation: an agreement between the servicer and the borrower to an alternative plan for a borrower who has been unable to make loan payments.

Loss Mitigation Affidavit: a required document in Maryland that must be submitted to the homeowner and the court and cannot be sent until the 45^{th} day or later after the Notice of Intent to Foreclosure has been sent. An affidavit must be filed with the Order to Docket. Affidavits may be preliminary or final. A Preliminary Loss Mitigation Affidavit is provided if the servicer has not completed an analysis of loss mitigation options. A Final Loss Mitigation Affidavit is provided if the servicer has completed the analysis. A servicer cannot proceed with the foreclosure process until the Final Loss Mitigation Affidavit has been filed. The Request for Foreclosure Mediation form is included with the Final Loss Mitigation Affidavit.

Mediation: a process that uses a third party to discuss disagreements outside a courtroom. Foreclosure mediation in Maryland is designed to provide a dialogue between homeowners and lenders to make sure a homeowner is offered all applicable loss mitigation options. Borrowers who want to *participate* in this process must complete the Request for Foreclosure Mediation Form and submit it within 25 days of the date they received it.

Modification: a loss mitigation option where the mortgage terms are adjusted to bring the loan current. A modification can lower the interest rate, extend the length of time available to repay the loan in full, and/or change the principal loan amount.

Mortgage: a legal document that pledges property to the mortgage company as security for the repayment of the loan. The term is also used to refer to the loan itself.

Mortgage Company: your lender, which may service as well as originate a loan. Sometimes the lender that originates the mortgage may choose not to service it.

Notice of Intent to Foreclose: a formal written notice to a borrower informing him/her of impending foreclosure proceedings. This notice must provide crucial information about the loan, including the default amount, servicer identification, and whom to contact at the servicer in order to pursue loss mitigation options**.**

Order to Docket: a foreclosure action required to be filed in court before the mortgage lender can move forward with foreclosure proceedings.

Principal: the amount of money borrowed to buy a house, or the amount of the loan that has not been paid back to the lender. This does not include the interest paid to borrow that money.

Principal Forbearance: a non-interest-bearing amount of principal that is added in a lump sum to the end of the mortgage and will require a balloon payment or refinancing in future years.

Refinance: a loss mitigation option that involves paying off one loan by obtaining another; refinancing is generally done to secure better loan terms but may not result in lower monthly payments.

Repayment Plan: a loss mitigation option where the servicer and a delinquent borrower agree to make additional payments to pay down past due amounts while making regularly scheduled payments.

Second Mortgage: an additional mortgage on a property. In case of a default, the first mortgage must be paid before the second mortgage. If a workout is obtained on the first mortgage, default on the second mortgage may still result in foreclosure.

Servicer: a company that collects monthly mortgage payments and disperses property taxes and insurance payments. The servicer may be the same as the lender, or a specialized company that only handles loans under contract with specific lenders or investors. Servicers also contact delinquent borrowers. Sometimes referred to as the *mortgage company*.

Short Sale: also referred to as a *pre-foreclosure sale*. A loss mitigation option in which the borrower is allowed to sell a property for an amount less than what is owed on it to avoid a foreclosure. The servicer should make arrangements either to forgive the difference or set up a payment plan. Servicers may pursue homeowners for the difference between the amount paid and the outstanding mortgage, called the deficiency judgment.

Statute of Limitations: a statute limiting the amount of time a party has for bringing a certain kind of legal action (civil or criminal) against another party.

Title: the documented evidence that a person or organization has ownership of real property.

Underwater Mortgage: a mortgage balance that is higher than the current valuation of the home. Also called negative equity.

Adapted with permission from the Maryland Housing Counselors Network Inc., Know Your Options, and the Baltimore Homeownership Preservation Coalition