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ORIGINAL

FILED

December 4, 2010

Clerk of the Supreme Court
Attn: Tracie K. Lindeman
201 South Carson Street
Carson City, NV 89701

DEC 10 2010
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ADKT 0435

RE: Comments regarding proposed rule changes

Dear Ms. Linderman and Honorable Judges:

My company is a licensed Covered Service Provider with the Division of Mortgage Lending, Independent License #3414, providing assistance and representation to homeowners.

I do not have any particular comments regarding the existing proposed changes. However, I would like to bring to your attention and address some of the practical problems my office experiences with the mediations. They do not relate directly to the program but instead to the various parties that participate in the program.

I have incorporated a lot of policy changes within my own company to try to rectify these problems (such as automatically sending a copy of the Mediation Agreement to the Servicer when I return to the office), but I cannot see how an unrepresented homeowner would know how to deal with these situations. The Petition for Judicial Review is an option but it is a complicated process for most laypersons and requires additional time and money.

Below are some proposed suggestions on how some of the practical problems can be fixed. It would require some minor changes to the existing Rules.

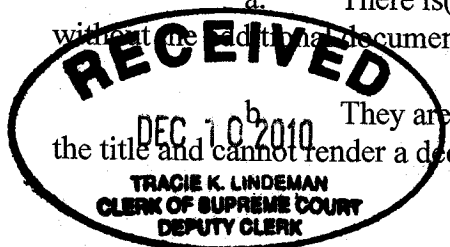
I. PRACTICAL PROBLEMS DURING THE MEDIATION:

1. Although we are experienced with loan modifications and provide a full workout package with every conceivable document and form required at least 10 days prior to the mediation, often the Negotiator has just received it and has not reviewed anything until the time of the mediation. Consequently, we spend the first 1-2 hours of the mediation waiting while the Negotiator reviews the documentation for the first time

2. When #1 happens, often the response is:

a. There is(are) a missing document(s) and the Negotiator cannot render a decision without the additional document(s).

b. They are waiting for title report to come back to make sure there are no liens on the title and cannot render a decision without the title report.



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c. They cannot evaluate the homeowner for any of the Making Home Affordable programs because they have to submit to the government first and that takes several weeks for a response.

d. When a homeowner is in an existing short sale process, the Negotiator does not have "access" to Equator or has no information on the status of the review of the short sale because that is a different department.

How these problems are rectified depends upon the Mediator and if they are willing to provide a continuation of the mediation to allow time for the Negotiator to get what it needs to finish the review. If the Mediator will not continue the mediation, they will sometimes mark the no agreement reached box and the homeowner is stuck trying to get the Negotiator to respond after the mediation.

If an agreement is reached to provide additional documents for an evaluation outside of the mediation program and the Mediation Agreement reflects that, we are usually required to send it to the Servicer's Representative. Often, the Servicer's Representative does not forward the documents to the Negotiator and my client is denied a workout for failure to submit the required documentation.

Meanwhile, the Servicer or Trustee requests a Certificate of Completion to continue with foreclosure.

II. PRACTICAL PROBLEMS FOLLOWING THE MEDIATION:

1. Once the mediation is concluded, the Lender's Representative (actually the Servicer's Representative) who physically appeared at the mediation provides no further assistance in any capacity. When we contact them, we are told we need to speak directly with the Servicer. However, we (homeowners and the homeowner's representative) are not provided with a direct contact number for the Negotiator who appeared on the phone and we are given the Servicer's general customer service number to call. When we call customer service, we get some random person who is reading the case status off the computer screen and cannot provide any further assistance.
2. The Mediation Agreement is not sent to the Servicer and they have no record of it in their system or any record of a mediation taking place.
3. Often, if a trial or loan modification is agreed to at the mediation, the trial or loan documentation is never sent to the homeowner. When we call the general customer number as instructed by the Servicer's Representative (see #1 above), the Servicer has no record the matter has gone through mediation nor is there information the homeowner received a trial or loan modification (see #2 above).
4. When the trial or loan modification documentation is not sent to the homeowner (see #3 above), the homeowner has nothing to send back. This is problematic because the homeowner's first payment or document return is usually time sensitive. Often, when we call to check on the status of the

document delivery, the situation identified in #2 and #3 above occurs. As we notify the Servicer that client was approved for a trial or loan modification, one of the following happens:

- a. Client is denied the modification because they did not timely pay the required first payment.
- b. Client is denied the modification because they did not timely return the documents the homeowner never received.
- c. We are instructed to resubmit an entire workout package to start the review process over from square one.

Meanwhile, the Servicer or Trustee requests a Certificate of Completion to continue with foreclosure.

III. PROPOSED SOLUTION:

A simple fix that will address most of the above problems is to require a mandatory Pre-Mediation Meeting. This can be accomplished by splitting the current 4-hour mediation time into two 2-hour sessions: (1) Pre-Mediation Meeting and (2) Mediation. The Pre-Mediation Meeting would be held as soon as possible following an assignment to a mediator. The Mediation would then take place no more than 20 days following the Pre-Mediation Meeting, on a time and date agreed to by the parties at the Pre-Mediation Meeting.

1. **PRE-MEDIATION MEETING:** This meeting would be a mandatory meeting of all of the parties that are appearing at the mediation. Some of the benefits for this meeting are:

- a. The parties get to meet and know who they are dealing with.

(1) The Servicer's local representative will have been hired and identified and it will be known who is representing the Servicer.

(2) The Negotiator who will be working the file for the Servicer will have to be assigned. Any appearance by phone request can be addressed as well.

(3) The homeowner(s) can be identified and issues addressed as to who is on the loan, who is on the title, and who needs to be present at the mediation.

- b. The Negotiator can ask the homeowner what their goal is – a loan modification, short sale, deed-in-lieu, etc. This will allow the Negotiator to know what they are evaluating the homeowner for. A simple, stock form for "Proposed Resolutions" may be helpful for the parties to fill in while at this meeting.

c. The initial document exchange should be done at this time. The Negotiator can provide the homeowner with a list of additional documents and forms it will need to conduct its evaluation of the requested resolution. If there are additional documents or forms needed, a deadline can be set for at least 10 days prior to the mediation. Information where the additional documents need to be sent can be provided to the homeowner.

d. The Negotiator has an idea what the homeowner wants and will have adequate time to submit for consideration under the HAMP or HAFA program. In addition, the Negotiator will have adequate time to order a title report, appraisal, get access inside the home, or do whatever else is needed for its evaluation.

2. **MEDIATION:** This would remain the current mediation portion. Hopefully, as a result of the Pre-Mediation Meeting, the parties can walk in to the mediation and immediately start to have meaningful discussions and to review the options that are available to the homeowner without spending the first 2 hours waiting for the Negotiator to review the package for the first time. There should also be no need for any continuation of the mediation.

I anticipate there is going to be some resistance from the mediators because it will require scheduling two meetings instead of one. However, given the large number of problems this would help resolve, I believe the mediators will appreciate the results once it is implemented.

I also anticipate resistance from the Lender's representative because they are already scrambling to keep up with the volume of mediations scheduled. In addition, they often have no idea who will be the assigned Negotiator and do not know until they call in at the time of the mediation to see who picks up the phone. However, this is a problem that needs to be addressed anyway because it frustrates the entire process and would make the Servicers and Servicer Representatives more accountable at these mediations.

IV. CERTIFICATES OF COMPLETION

I often joke the Certificate of Completion is like Willy Wonka's golden ticket and the servicer/trustees/lenders reps are Veruca Salt demanding to get the golden ticket! In all seriousness, the issuance policy of the Certificates of Completion is a complete mystery. Guidance on how they are issued and what action or agreement triggers receiving or not receiving a Certificate would be very helpful.

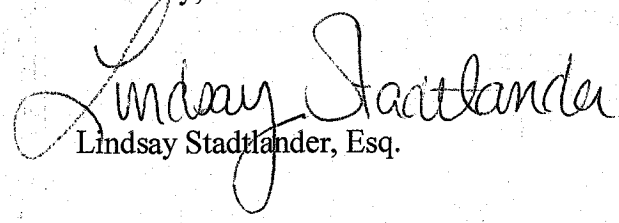
Another problem I am experiencing relating to issuance of the Certificates is the Negotiator refusing to document any type of agreement or offer any stay on foreclosure when a short sale is the only option the Servicer is giving to the homeowner. The rationale is because it is the current policy of the program to treat any agreement to stay the foreclosure the same as a trial modification and to *not* issue a Certificate. Because of this, the Servicer would have to restart the foreclosure process over. Hence, it is better for the Servicer to not agree on anything. I believe my proposal for the Pre-Mediation Meeting will help address this problem and allow more meaningful resolutions for a short sale option.

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I would be honored to further discuss the above should anyone have any further questions or would like additional input from me.

Sincerely,



Lindsay Stadlander, Esq.