

3/7/2014

IN RE: ADMINISTRATIVE ORDER  
REGARDING RESIDENTIAL  
MORTGAGE FORECLOSURE  
DIVERSION PROGRAM

: IN THE COURT OF COMMON PLEAS  
: BERKS COUNTY, PENNSYLVANIA  
:  
: CIVIL No. 14-96  
: CRIMINAL No. CP-06-AD0000007-2014

ORDER

AND NOW, this 4TH day of March, 2014, this Order is hereby promulgated in order to provide the parties in a residential mortgage foreclosure action a formal procedure by which to (1) resolve the mortgage foreclosure complaint while (2) enabling defendant homeowners to remain in their homes. This order is effective on October 1, 2013 and supersedes all previous orders relating to the Mortgage Foreclosure Diversion Program. Accordingly, the following Program is hereby adopted:

1. This Program is limited to actions on a consumer credit transaction (as defined by Pa R.C.P. 2950) secured by a mortgage on owner-occupied residential property (a "Qualifying Action"). All actions, including mortgage foreclosures, arising from a commercial loan, or other non-consumer credit transaction, are specifically excluded from the provisions of this Program. All complaints which are filed in connection with (i) a consumer credit transaction (as defined above) which (ii) is secured by a mortgage on residential property shall be accompanied by a Certification which shall state whether or not the action arises from a consumer credit transaction secured by a mortgaged residential property which is owned and occupied by the defendant therein. The required form of Certification is attached to this Order as Attachment "A". The Certification shall be served upon all Defendants named in the Complaint with service of the Complaint.

For purposes of this Order, an "owner-occupied residential property" is a residential property in which at least one Defendant resides as his/her primary residence.

2. If the Certification indicates that the action is not a Qualifying Action, the remaining procedures in this Administrative Order shall not be applicable and the Plaintiff may proceed as per the Pennsylvania Rules of Civil Procedure. The Sheriff's return of Service shall indicate service of the Certification along with service of the Complaint. If a Defendant believes that the action is a Qualifying Action, the Defendant may petition the Court to be included in the Program. If the Certification indicates that the action is a Qualifying Action, Plaintiff shall include a copy of the "URGENT NOTICE" form for service by the Sheriff upon each Defendant to be served. The Urgent Notice form is attached as Attachment "B". The Urgent Notice shall be filed with, but not attached to the Complaint and shall be served separately but contemporaneously with the Complaint. The Sheriff shall file a return of service which shall indicate the service of the Certification and the Urgent Notice along with service of the Complaint. The Urgent Notice and

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Certification shall accompany any Complaint to be served by deputized service. If service of the Complaint is to be effectuated by alternate service as provided by Pa.R.C.P. 410 and Pa.R.C.P. 430, the Urgent Notice and Certification shall be posted on the property and served via mail if such service of the Complaint is authorized by the court order authorizing alternate service.

3. If the Defendant in a Qualifying Action contacts a housing counselor provided in the Urgent Notice within the ten (10) day time limit, as stipulated in the Urgent Notice, the housing counselor shall, within three (3) days of the contact, notify Court Administration in writing via fax or e-mail, of Defendant's election to participate in the Program. Court Administration shall prepare an order for a Conciliatory Conference in the form which is attached as Attachment "C", which shall be signed by a Judge of the Court. The Order for Conciliatory Conference shall be filed with the Prothonotary, noted in the docket entries for the case, and served by the Prothonotary by mail upon Plaintiff's Attorney, the Defendant(s), the housing counselor and the Defendant's attorney, if any. The Conciliatory Conference shall be scheduled to take place no sooner than ninety (90) days or later than one hundred (100) days from the date of notification to Court Administration by the housing counselor. Nothing in this paragraph shall prevent the admission of Defendant(s) into the program at the Court's discretion, upon the Defendant(s) contacting a housing counselor provided on the Urgent Notice at any time prior to entry of judgment.

4. The Defendant(s) shall meet with the housing counselor within a reasonable time after Defendant(s) contacted the housing counselor, and within 20 days from the Defendant's initial contact with the housing counselor, the Defendant shall provide the housing counselor with all financial information and documents requested by the housing counselor. The housing counselor shall transmit the financial information and documents to the Plaintiff and/or Plaintiff's Attorney via fax or e-mail at least forty-five (45) days prior to the date for the Conciliatory Conference. It is expected that the parties will exchange all required information and actively attempt to resolve the litigation.

- (a) Housing counselor shall attempt to contact the Plaintiff and/or Plaintiff's Attorney to obtain the Plaintiff's particular workout modification packet for completion and submission. In lieu of such packet, the housing counselor shall at a minimum transmit the documents prescribed in Attachment "D".
- (b) Defendant's cooperation with the housing counselor is mandatory including, but not limited to, providing documents in a timely manner and appearing at the housing counselor's office for counseling appointments. Should Defendant fail to cooperate, the housing counselor shall notify the conciliator at the next scheduled conference of the Defendant's failure to cooperate.
- (c) Any agency providing housing counselors for this Program shall have a minimum of one certified housing counselor on staff. All housing counselors providing services to Defendants in this Program shall attend training sessions

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conducted by Pennsylvania Housing Finance Agency (PHFA) or other entities as appropriate.

5. The entry of the Order for Conciliatory Conference shall include a STAY of all further action in the case, including the issuance of the Important Notice (10 Day Notice). The Stay shall continue until further order of Court. After an order lifting the Stay, the Plaintiff's Attorney may serve the Important Notice (10 Day Notice) and proceed as per the Pennsylvania Rules of Civil Procedure.

6. The Conciliatory Conference shall be conducted by a Conciliator designated by the Court. The Defendant(s), the housing counselor, Defendant's attorney, if any, and Plaintiff's Attorney shall appear in person at the Conciliatory Conference. Plaintiff's representative, who shall have authority to approve a settlement, shall be available via telephone on the date and at the time scheduled for the Conference. Conciliators shall attend training sessions conducted by the Berks County Bar Association in conjunction with PHFA, or other entities as appropriate.

7. At the conclusion of the Conciliatory Conference, the Conciliator shall issue a recommendation, which may (i) memorialize the results of the Conference, (ii) schedule future Conferences and other deadlines, (iii) lift the Stay, or (iv) propose a conference with a Judge, as the Conciliator deems appropriate. The Court may enter an order based on the recommendation of the Conciliator, or such other order as the Court deems appropriate. Such order may include dismissal of the foreclosure lawsuit, without prejudice, upon Defendant's acceptance by Plaintiff into a permanent modification, or such other time or circumstance as the Court may order.

8. This Order is effective for all civil actions filed on or after January 1, 2012 which arise from a consumer credit transaction secured by a mortgage on owner-occupied residential property.

9. In any case which was commenced before December 31, 2011, and which would be a Qualifying Action if it had been filed after that date, but in which no judgment has been entered or in which an Important Notice (10 day notice) has not yet been sent to the Defendant(s), the 10 day notice shall be accompanied by the Certification and Urgent Notice as provided in Attachment "A" and "B", giving the Defendant(s) in that pending action notice of the availability of the Program. A subsequent praecipe for default judgment in such cases shall include a statement of compliance with this requirement. Prior to the filing of a Motion for Summary Judgment, Motion for Judgment on the Pleadings or Motion for Judgment Upon Admission, Plaintiff shall send via regular mail to all defendants at the address where service of the Complaint was effectuated and to defendant's counsel, if any, the Certification and Urgent Notice as provided in Attachment "A" and "B". However, if a judgment has been entered, participation in the program must be done by filing a Petition with the Court requesting to be placed in the program and to stay the proceedings.

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10. Nothing in this Administrative Order shall limit the authority of a Judge, *sua sponte*, or in his/her discretion on motion by a party, to refer any pending action which such Judge believes to be a Qualifying Action to the Program and impose a Stay of all proceedings.

11. This Administrative Order shall remain in effect until further Order of the Court.

BY THE COURT

  
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Paul M. Yatron, President Judge

RECEIVED  
PROTHONOTARY'S OFFICE  
2014 MAR -5 P 2:20\*  
BERKS COUNTY, PA  
MARIANNE R. SUTTON  
PROTHONOTARY