

Dear Volunteer Attorney:

Thank you for volunteering to assist homeowners facing foreclosure. The purpose of the following guide (“Guide”) is to enable you to quickly determine how to assist your client in the loss mitigation process to facilitate a possible settlement.¹ The focus is not on litigating the matter. The first fact you will need to determine is the borrower’s loan type. Once you know the loan type, your task will be limited to understanding the options available for that specific type of loan. If the foreclosure action has already been filed, it is also important to contact the plaintiff’s attorney as soon as possible.

This Guide includes information about the different types of loans that could apply in any case. It is organized by sections, hopefully making it easy to identify the information you might be seeking. Each loan type has its own section. Therefore, only a small portion of the Guide will apply to your client. Also, please note that the Guide assumes the property is not vacant or abandoned. If the property is vacant or abandoned, the borrower’s options will be significantly limited.

Please see the Table of Contents for a list of the other sections provided in the Guide. We have included additional resources should you seek more information than what we provided.²

Additionally, we have provided a template for a Qualified Written Request (QWR)³ and a template intake form that we hope will assist you further.

We recommend that you begin your first appointment with the Homeowner Questionnaire and the blank intake form. The Homeowner Questionnaire is a list of yes/no questions to help you and your client determine the approach that is most appropriate for your client’s circumstances. The post-COVID rule released by the Consumer Financial Protection Bureau (CFPB) sets forth a goal to ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation.⁴ Thus, consulting with the homeowner about the pros and cons of each option under the homeowner’s particular situation is key prior to contacting the loan servicer or the plaintiff’s attorney about the options that might be available in each case. In addition, options are constantly evolving so please use the resources provided (Section XVI) to verify the status of the available options.

The authors of this Guide recognize that some foreclosures are unavoidable, however, where foreclosure is avoidable, all parties benefit. The CFPB’s new rule for post-COVID mortgage servicing states “The Bureau will continue to engage in supervisory and enforcement

¹ This Guide is intended for use by volunteer attorneys to assist homeowners facing foreclosure and is available to provide general resource information. The information contained in the Guide is not legal advice. Volunteer attorneys will need to independently evaluate the specific circumstances of each case.

² The information contained in this Guide includes hypertext links or references information created and maintained by other public and/or private organizations. The Second Judicial District Court does not endorse the organizations or views represented by outside entities and takes no responsibility for, and exercises no control over, the accuracy, accessibility, copyright or trademark compliance or legality of the material contained on outside websites.

³ 12 C.F.R. § 1024.31; 12 C.F.R. § 1024.36

⁴ 86 FR 34848. 2021 Mortgage Servicing COVID-19 Rule, 12 C.F.R. Part 1024.

activity to ensure that mortgage servicers are meeting the Bureau's expectations regarding the provision of effective assistance to borrowers and prevention of avoidable foreclosures."⁵

Thank you again for providing your valuable time.

Sincerely,

Foreclosure Settlement Program⁶
Second Judicial District Court Pro Bono Committee

⁵ *Id.* at 34854.

⁶ This document is the work product of the Second Judicial District Court's Foreclosure Settlement Program (FSP), and as such, any use of it must be credited. It incorporates the knowledge gained from many years of experience in this area and from the FSP, as well as review of the most recent research/studies.

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I. MORTGAGE ESSENTIALS

Note	The note is the promissory note that evidences the loan that was made. It is the borrower's promise to pay back the loan in accordance with its terms. A mortgage note can be secured by a mortgage or a deed of trust.
Mortgage	A mortgage is the document that secures the property as the collateral for the note. Its purpose is to provide security for the note. If the note is not paid, the mortgage is the document that permits the owner of the promissory note to sell the property to pay off the note. UCC Rule: The mortgage must follow the note. <i>Restatement (Third) of Property (Mortgages)</i> § 5.4. UCC § 9-203(g) codifies this rule for both sales of a mortgage note and a security interest in a mortgage note to secure an obligation. Further, perfection of a security interest in the mortgage note (whether in favor of a buyer or a lender with a security interest to secure an obligation) also perfects the security interest in the buyer's or lender's security interest in the seller's or borrower's rights in the mortgage. References to a "mortgage" in UCC § 9-203(g) include other types of consensual rights in real property to secure an obligation, such as a deed of trust. UCC § 9-102(a)(55).
Deed of Trust	A deed of trust or trust deed is a legal instrument which is used to create a security interest in real property wherein legal title in real property is transferred to a trustee, which holds it as security for a loan between a borrower and lender. The trustee makes a deed of trust different from a mortgage because a mortgage does not involve a third party.
Owner/Investor	The owner refers to the entity that owns the note. Investors may include private companies or government agencies. Their rules and guidelines impact the loss mitigation options available through a loan's servicer.
Servicer	The servicer may or may not be the company that provided the purchase loan. Servicers contract with owners to manage mortgage accounts. They accept payments, credit payments, handle escrow accounts and pay property taxes and insurance on behalf of the borrower. Servicers also serve as the point of contact for borrower communications. They have loss mitigation rules they follow in addition to the owner or investor's rules and guidelines. The servicer is the entity you will most likely be contacting to get loan information and to negotiate a settlement. Servicers also hire the attorneys who handle foreclosures. It is common for home loans to be transferred from one servicer to another.
Mortgage Insurer	The company that insures the loan. If a borrower is paying mortgage insurance, the insurer is the company that is insuring the mortgage. If the owner cannot collect the full amount that is due on the note in a foreclosure sale, the mortgage insurance company is supposed to make up the difference between the amount received and the amount owed. Sometimes, insurers are necessary parties in foreclosure cases.

FHA	The Federal Housing Administration (FHA) insures loans for borrowers who qualify. FHA is part of the U.S. Department of Housing and Urban Development (HUD). FHA mortgage insurance protects lenders against losses. If a property owner defaults on their mortgage, FHA will pay a claim to the lender for the unpaid principal balance. Because lenders take on less risk, they are able to offer more mortgages to homebuyers.
VA	The U.S. Department of Veterans Affairs (VA) guarantees loans for borrowers who qualify. Eligible borrowers obtain loans through private lenders and the VA guarantees part of the loan against loss. The VA guaranty enables lenders to give veterans better loan terms, like a 0% down payment.
Conventional Loans	“Conventional” means that the loan is not insured or guaranteed by the federal government. Conventional loans usually require a down payment greater than 3.5%. There are two main categories of conventional loans: Conforming and non-conforming. Conforming loans have maximum loan amounts that are set by the government. Other rules for conforming loans are set by Fannie Mae or Freddie Mac. Non-conforming loans are less standardized. ⁷
GSE, Fannie Mae and Freddie Mac	The Federal National Mortgage Association a/k/a Fannie Mae (FNMA) and the Federal Home Loan Mortgage Corporation a/k/a Freddie Mac (FHLMC) are government-sponsored enterprises (GSEs). A GSE is a quasi-governmental entity established to enhance the flow of credit to specific sectors of the U.S. economy. Created by acts of Congress, these agencies—although they are privately-held—provide public financial services. Fannie Mae and Freddie Mac buy mortgage notes from investors to put money back into the mortgage market, ensuring liquidity.
Privately-held mortgages	About 30%, or roughly 14.5 million U.S. mortgages, are privately owned and not affiliated with any federal agency. ⁸ Privately-held mortgages are subject to federal laws and regulations (like RESPA and Regulation X), but they are not subject to the same guidelines that govern the government-affiliated mortgages. Approximately 70% of all mortgages in the U.S. are owned, backed, insured or guaranteed by a federal agency like HUD/FHA, VA, USDA or one of the GSEs.

⁷ See <https://www.consumerfinance.gov/owning-a-home/loan-options/conventional-loans/> (site last visited on August 25, 2021).

⁸ See National Housing Law Project, <https://www.nhlp.org/covid/homeowner-protection-and-resources/> (site last visited August 25, 2021).

II. INTAKE FORM

Client name ⁹			
Client telephone number			
Client email address			
Case Name & Case Number			
Loan number			
If applicable, Lender's attorney, name and contact information ¹⁰			
Names of all borrowers on the mortgage			
Property address			
Current monthly income			
Principal & interest payment		Monthly homeowner's insurance payment	
Total monthly payment (PITI)		Monthly property tax payment	
Date of Default		Type of Loan	

1. Is the Foreclosure Complaint in Rem or not? Yes/No (circle). An In Rem Complaint means that the plaintiff is not seeking any money judgment in the lawsuit.

2. Does the borrower have a COVID-19 related hardship?¹¹

Continue on reverse if necessary.

3. Is the home occupied by the borrower? _____ Note: Occupancy may be a requirement for certain loss mitigation options. Other options may be available for non-owner-occupied properties.

4. Forbearance Status: Is the loan in forbearance? Yes/No (circle)

⁹ If the client is someone to whom the property has transferred, see Section V Successor in Interest.

¹⁰ Contact the lender's attorney directly if the foreclosure action has been filed.

¹¹ The COVID-19 mortgage relief options are available to homeowners who have experienced "[a] financial hardship due, *directly or indirectly*, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d))." 12 C.F.R. § 1024.3.

Expiration date of forbearance: _____

Start date of Initial Forbearance Period: _____

Total number of months in forbearance: _____

5. The loan's current interest rate? _____ Note: The current interest rate is important because some loss mitigation options retain the contractual interest rate while other options reduce the interest rate to the current market rate if it is lower.

6. Current Maturity Date: _____ Note: The current maturity date is an important consideration because loan modifications will extend the maturity date significantly in order to reduce the monthly payment. Homeowners should understand the extension of the maturity date in order to make an informed decision.

An excellent resource for homeowners facing foreclosure is the CFPB Homeowner's Guide, available at:
https://files.consumerfinance.gov/f/documents/cfpb_mortgages_homeowners-guide-to-success.pdf.

The following resources may be helpful if the homeowner has questions about how foreclosure or loss mitigation strategies will affect their credit report:

<https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/>

<https://www.experian.com/blogs/ask-experian/how-does-a-foreclosure-affect-credit/>

<https://www.transunion.com/customer-support/faqs/credit-basic>

<https://www.equifax.com/personal/education/covid-19/how-short-sale-foreclosure-affects-credit-scores/>

III. HOMEOWNER QUESTIONNAIRE

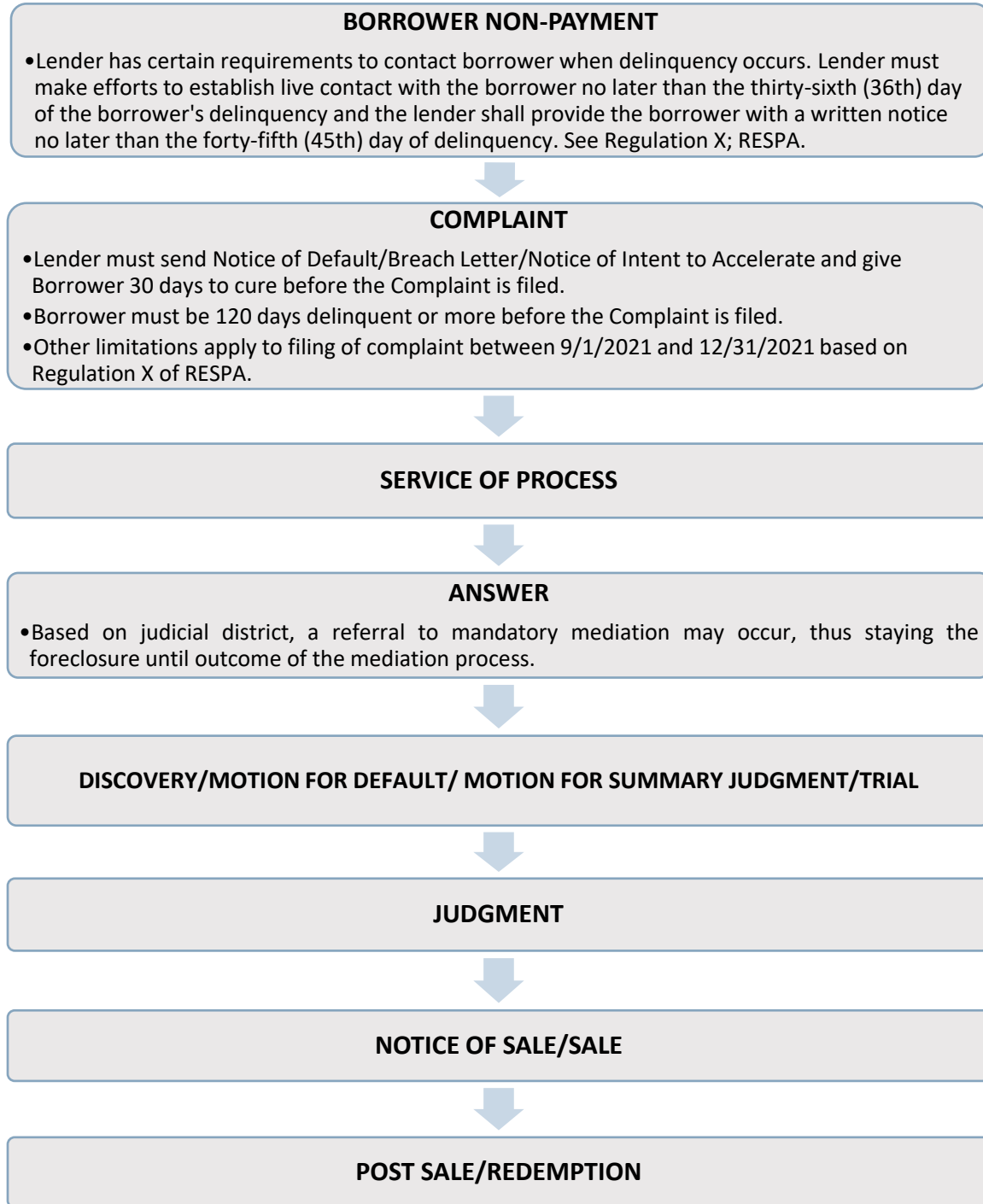
Order	Ask Homeowner	Yes	No
1	Is the borrower deceased?	Go to “Successor in Interest” Information and review. Then return to this page and continue with questions.	Continue with questions.
2	Do you know what type of loan you have?	Continue with questions.	Go to “Look-up tools” section. You can also send a QWR or call the servicer for this information.
3	Do you want to keep the home?	Continue with questions.	Go to “Other Loss Mitigation Strategies.”
4	Do you need more time in forbearance?	Ask servicer if any more time is available to Homeowner.	Continue with questions.
5	Do you know your interest rate? <u>Note:</u> Current Interest rate might impact what is best option for Homeowner.	Note the homeowner’s current interest rate to compare with current market rate (PMMS) ¹² . Continue with questions.	Call servicer or see mortgage statement to answer. Then answer yes to this question and proceed with questions.
6	Is the property occupied by the owner?	Continue with questions.	Go to non-owner-occupant programs for loan type.
7	Are any of the homeowners/borrowers receiving consistent income?	Continue with questions.	Go to “Other Loss Mitigation Strategies.”
8	Do you want to return to your pre-forbearance monthly payment (may include an increase if taxes, insurance, HOA increased)?	Review payment deferral (FNMA-FHLMC) or partial claim option (VA-FHA).	Review loan modification option with Homeowner for loan type.
9	Do you want to lower your monthly payment?	Review loan modification option with Homeowner for loan type.	Review payment deferral (FNMA-FHLMC) or partial claim option (VA-FHA).
10	Do you need the lowest possible monthly payment?	Review “combination” options with Homeowner for loan type.	Go back to Questions 8 & 9 and decide which option to review first.
11	Do you want to know about all the options to exit forbearance before you decide?	Go to loan type section and review all options.	Go back to Questions 8 & 9 and decide which option to review with Homeowner.
12	Do you want to keep the home, AND you need more time, AND you have exhausted all other options?	Homeowner may want to litigate the foreclosure case or consult with a bankruptcy attorney. ¹³	Review Questions 1-11 for the best option to consider.

¹² Freddie Mac Weekly Primary Mortgage Market Survey Rate for 30-year fixed-rate conforming mortgages.

¹³ Litigation will give the borrower more time and bankruptcy will stay a foreclosure proceeding allowing the borrower more time to find a solution.

IV. OVERVIEW – FORECLOSURE LITIGATION PROCESS¹⁴

Practice Point: The actual process depends on the defense’s litigation strategy. During most of the process, the borrower is permitted to apply for loss mitigation review and counsel should review applicable laws and regulations to determine whether deadlines or other limitations apply.



¹⁴ This flow chart is not intended to be comprehensive, but to give a brief overview of the process.

V. SUCCESSOR IN INTEREST INFORMATION

If the borrower is deceased, your client may be a successor in interest.

- If the client is not the borrower on the loan, the client may be a successor in interest **holding the same rights as the borrower**. See 12 C.F.R. 1024.30(d) & 12 C.F.R. 1026.2(a)(11).
- This may occur when the borrower passes away and the title to the property transfers by operation of law (for example, through a transfer on death deed) or by other means transferring the property to the spouse or children of the deceased borrower. This may also occur as a result of divorce or legal separation that transfers the property under a property settlement agreement.
- The person to whom the property is transferred will need to provide certain documents to the servicer so that the servicer may confirm the person's identity and ownership interest in the property in order to thereafter confirm the client as a successor in interest. Once **confirmed** as a successor in interest, the client is considered a "borrower" under the Real Estate Settlement Procedures Act (RESPA) and a "consumer" under the Truth in Lending Act (TILA).
- **A confirmed successor in interest** may communicate with and attempt to work out a loss mitigation agreement with the lender.
- **A confirmed successor in interest is not personally liable on the mortgage loan unless the confirmed successor in interest signs an assumption.**

VI. LOAN TYPES AND LOOK-UP TOOLS

Practice Point: The type of loan determines the loss mitigation options that are available to the Homeowner.

Loan Types	How to find out the loan type
FHA	Call the servicer by using the customer service number on the monthly statement and ask. The servicer will need the loan account number. If the mortgage is an FHA-insured loan, ask the servicer for the “FHA Case Number.” You will need the FHA case number for any direct contacts with HUD/FHA. FHA loans are subject to FHA guidelines for loss mitigation.
USDA	Call the servicer by using the customer service number on the monthly statement and ask. The servicer will need the account number. USDA loans are subject to USDA guidelines for loss mitigation.
VA	Call the servicer by using the customer service number on the monthly statement and ask. The servicer will need the account number. VA loans are subject to VA loans for loss mitigation.
Conventional Loans	“Conventional” means that the loan is not insured or guaranteed by the federal government. If the mortgage is a conventional loan, it could be owned by Fannie Mae, Freddie Mac or a private investor. Call the servicer and use the Fannie Mae and Freddie Mac look-up tools below to find out who owns the loan.
GSE – Fannie Mae	Go to: https://www.knowyouroptions.com/loanlookup and fill out the form to find out. Fannie Mae loans are subject to Fannie Mae guidelines for loss mitigation.
GSE – Freddie Mac	Go to: https://loanlookup.freddie.mac.com/ and fill out the form to find out. Freddie Mac loans are subject to Freddie Mac guidelines for loss mitigation.
Privately held loan	Call the servicer by using the customer service number on the monthly statement and ask. The servicer will need the account number. Privately held loans are subject to the owner/investor rules for loss mitigation.
Other	There are more loan types, but they are uncommon. If the Homeowner has a different loan type, contact the servicer and, if applicable, the federal agency that is affiliated with the loan.

What is a Qualified Written Request (QWR)?

The QWR is a powerful tool when the servicer is not forthcoming.

A Qualified Written Request, or QWR, is a written request for information that a Borrower can send to the company that is servicing the mortgage loan (the servicer). The regulation that concerns these requests can be found at 12 C.F.R. § 1024.36 “Requests for Information.”

The QWR must be clear.

The request needs to explain in detail what information the Borrower wants.

The QWR must be sent to the correct address.

The request must be sent to the correct address, which may be different from the address to which the Borrower sends mortgage loan payments. The correct address will be designated as an address for Requests for Information or Notices of Error. This specific address may sometimes be found on the back of the mortgage statement. If the QWR address is not on the statement, then you should check the servicer’s website or call the servicer for the correct address.

Deadlines.

The servicer must respond to a QWR. The mortgage loan servicer must provide a written acknowledgment of receipt of the written request **within five business days**, 12 C.F.R § 1024.36(c).

If a Borrower requests the identity of, and address or other relevant contact information for the owner or assignee of the mortgage loan, the servicer must provide the Borrower with that information **within ten days of receipt of the request**. §1024.36(d)(2)(i)(A).

The servicer has **30 business days** to respond to all other requests for information. §1024.36(d)(2)(i)(B).

Important information that should be included in the QWR:

- **The Borrower(s) name, property address, and mortgage account number.** Use the name that is on the mortgage.
- **Identify the information the Borrower is requesting.**
- **Don’t write the request on a payment coupon** or other payment form received from the mortgage servicer because, “[a] request on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a request for information.” 12 C.F.R. § 1024.36(a).
- **Reminder - Make sure to mail the QWR to the correct address as designated by the servicer for Requests for Information.**

QUALIFIED WRITTEN REQUEST FORM LETTER

Homeowner(s) / Borrower(s) name(s)

Address [Get correct address from servicer for QWRs.]

VIA FACSIMILE / EMAIL / CERTIFIED MAIL: _____

To: _____

Mortgage co. or Servicer

Address

City

State

Attn: Mortgage Loan Accounting Department or Borrower Inquiry Department

Re: Acct. no. _____

Property address: _____

Dear Sir or Madam:

_____ [mortgage servicing company] is the servicer of my/our mortgage loan at the above address. We are requesting the following information:

1. The identity of the owner of our mortgage loan and the owner's mailing address and telephone number.
2. Disclosure of all loss mitigation options of the owner of this loan, the eligibility criteria for each option, and what is needed from me, the Borrower, to be evaluated for those loss mitigation options.
3. Current reinstatement and payoff quotes.
4. Current interest rate & whether it is a fixed or adjustable interest rate.
5. Current maturity date.

Thank you for taking the time to acknowledge and answer this request.

Very truly yours,

Homeowner(s) / Borrower(s)

Date

VII. FHA OPTIONS FOR OWNER AND NON-OWNER OCCUPANTS

Question Order	Ask Homeowner	Yes	No
1	Do you occupy the property? ¹	Go to Question 2.	Go to FHA Options for Non-Owner Occupants.
2	Do you need more time in forbearance?	Go to FHA Forbearance Calendar to check if more time is available.	Go to Question 3.
3	Has your servicer sent you an offer to do an Advanced Loan Modification (ALM)? See HUD Mortgagee Letter 2021-18.	Review loss mitigation options below.	Go to the ALM Information Summary and contact your servicer.

Practice point: If the default occurred before the COVID-19 pandemic or is not due to a COVID-19-related financial hardship, the borrower *may* have to complete a loss mitigation application. However, FHA COVID-19 options **do not require a loss mitigation application and do not require a trial payment plan**. The servicer must also waive all late charges, penalties, & fees, but not amounts accumulated prior to 3/1/2020. The option must fully reinstate the loan. Finally, the “*current market interest rate*” is the Freddie Mac weekly Primary Mortgage Market Survey (PMMS) rate rounded to the nearest .125%.

FHA COVID-19 Forbearance Exit Options to be reviewed with homeowner:

Option	Description	Considerations
Pre-Waterfall² ALM	The servicer is required to evaluate you for the ALM option, prior to making other offers in the hierarchy below. See COVID-19 ALM Information Summary in this section of the Guide for the details.	Your payment has to be reduced by 25% under the ALM rules in order to qualify for the ALM option.
COVID-19 Recovery Standalone Partial Claim³	The amount you owe for missed payments is still owed, but you do not have to pay it back until you refinance, sell, or reach your maturity date. The deferred balance is called a partial claim. The partial claim accrues no interest. Once you agree to this option with your servicer, you will resume making the same principal and interest payments that you were making before your forbearance period.	Can homeowner afford their pre-forbearance payments? Have taxes & insurance costs increased? Has the homeowner utilized a partial claim in the past? The maximum allowable partial claim is 25% of the unpaid principal balance as of the date of default. If there is a prior partial claim, that amount must be subtracted from 25% of UPB to determine available PC amount.

¹ Homeowner eligible where owner and non-owner occupied. HUD Mortgagee Letter, ML 2021-18.

² HUD uses the term “waterfall” to describe the hierarchy of the loss mitigation options if offers. If borrower cannot afford the first one, then the second one is offered, then the third, and so on.

³ HUD Mortgagee Letter, ML 2021-18 at pg. 12.

Option	Description	Considerations
COVID-19 Recovery Modification (Owner-occupied)⁴	<p>Your loan is modified to make the monthly payment more affordable which can be accomplished by using a partial claim and modifying the interest rate and term. A partial claim can be used to defer principal.</p> <p>The interest rate will be reduced to the current market interest rate⁵ and your loan term will be extended to reach a target monthly payment resulting in a 25% reduction to the P&I portion of your monthly payment. If target payment amt. is not reached, borrower must be offered the lowest monthly P&I payment calculated. Borrower can agree to the offered payment.</p>	<p>Can the homeowner afford a lower monthly payment? Is the homeowner's interest rate adjustable? The loan modification rate will be a fixed interest rate. Is the homeowner's interest rate higher than the current market interest rate? What is the homeowner's current maturity date? The new loan term will be for 360 months (30 years).</p>
COVID-19 Recovery Non-Occupant Loan Modification⁶	<p>Your loan is modified by reducing the interest rate and increasing the term. The interest rate will be reduced to current market interest rate and the loan term increased to 360 months. Homeowner may request a shorter term.</p>	<p>The property can be used as a Rental Property, Secondary Residence or Vacation Home. Can the homeowner afford the modified payment? Homeowner's total monthly Mortgage payment may increase. The modification must fully reinstate the Mortgage. The modified Mortgage must be a fixed rate Mortgage.</p>
COVID-19 Pre-Foreclosure Sale (PFS)⁷	<p>Homeowner gets approved to sell the property for proceeds that are less than the amount owed on the Property if the homeowner does not qualify for any retention options above. In this process, lien holder(s) agree to release lien(s) and forgive the deficiency balance on the Property. The Property cannot be condemned. Servicer will follow the PFS requirements under Handbook 4000.1, Section III.A.2.I.ii.</p>	<p>Does the property have equity? Is there enough equity to pay off the loan amount? Will the homeowner receive any proceeds from the sale? Does the homeowner understand how their credit report will be affected? The servicer can assist with these considerations. You can also request that a HUD representative join the call. Homeowner should obtain independent legal advice regarding tax consequences when deficiency balance is forgiven.</p>

⁴ HUD Mortgagee Letter, ML 2021-18 at pg. 14.

⁵ The interest rate should be no greater than the most recent PMMS Rate rounded to the nearest 0.125 %. ML 2021-18 at pg 16.

⁶ HUD Mortgagee Letter, ML 2021-18 at pg. 18.

⁷ HUD Mortgagee Letter, ML 2021-18 at pg. 20.

Option	Description	Considerations
COVID-19 Deed in Lieu of Foreclosure (DIL)⁸	Homeowner offers the deed to HUD in exchange for a release from all obligations under the Mortgage. This option becomes available when homeowner is unable to complete a Pre-foreclosure Sale (PFS) by the expiration of the PFS marketing period. Homeowner must meet all DIL requirements except: the Borrower eligibility Streamlined DIL requirements under Handbook 4000.1, Section III.A.2.I.iii which are not required for COVID-19 DIL. If DIL follows a failed COVID-19 PFS, DIL must be completed within 90 days of the termination or expiration of the PFS ATP Agreement (form HUD-90045).	Does the homeowner understand how their credit report will be affected? The servicer can assist with these considerations. You can also request that a HUD representative join the call. Homeowner should obtain independent legal advice regarding tax consequences for DIL.

Once the options have been reviewed with homeowner, proceed to next steps below. If the foreclosure action has been filed, the plaintiff’s attorney will be your primary point of contact instead of the servicer.

Next steps:

1. Call the homeowner’s servicer for a loss mitigation evaluation. The servicer will walk the homeowner through the options available. You and your client can indicate to the servicer the option that is most suitable for the homeowner during the evaluation process. The evaluation can be completed by telephone.
2. The servicer will send the homeowner the documents necessary to complete the option selected. Review the documents for consistency with the homeowner’s decision and follow the servicer’s directions for execution of the documents.
3. Attorney closes the matter and homeowner starts making monthly payments based on the new agreement with the servicer.

For HUD cases, the phone number for the FHA National Servicing Center is 1-800-225-5342 (M-F, 8am – 8pm ET). Return calls from the National Servicing Center may take up to 5 business days. This is also the number to call to schedule a HUD representative to attend a conference call with the borrower and the servicer, if needed.

HUD housing counselors are available to give free advice to borrowers and a local counselor can be found by calling 1-800-569-4287.

⁸HUD Mortgagee Letter, ML 2021-18 at pg. 21.

COVID-19 ALM INFORMATION SUMMARY

FHA LOANS ONLY

Servicer Deadlines: Servicers/lenders must review eligible borrowers⁹ for the COVID-19 ALM within **30 days of the expiration of the forbearance.**

No later than **August 24, 2021**, Servicers must review the following borrowers for an ALM if the servicer has not sent the final documents for a Loss Mitigation Option as of **June 25, 2021**: (1) Borrowers who have exited or requested to exit their COVID-19 forbearance; (2) Borrowers whose COVID-19 forbearance has expired or will expire by August 24, 2021; or (3) Borrowers who were not on a COVID-19 forbearance.

Question Order	Ask Homeowner	Yes	No
1	Are you 90 days or more delinquent? AND Will reducing your interest rate using the Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) Rate rounded to the nearest .125 percent reduce your principal & interest payment by 25%?	You may qualify for an ALM – Advance Loan Modification and should request the documents from your lender if they have not already been sent to you.	Borrowers who do not qualify for the COVID-19 ALM or who do not complete and return the signed COVID-19 ALM offer must be evaluated for other COVID-19 Loss Mitigation Options. Ask lender to do so.

Calculation assistance: Lender must do this for the Homeowner. If you wish to assist,

Step 1: Check the internet for the current PMMS.

Step 2: Use an amortizing calculator online to enter the new interest rate (I/Y), the new term of 360 months, and the principal loan balance owed after forbearance. Compare the new monthly payment to the old monthly payment and determine if the new payment is 25% less than the pre-forbearance payment. Only use principal and interest payment to compare the payments. Do not use property taxes, homeowner’s insurance or homeowner association amounts. If yes, the ALM option may work for this homeowner.

Required terms for the ALM:

PMT reduction	Interest	Interest rate	Term	New Principal	Arrearages	Cost to Homeowner
25%	Must be a fixed rate	Rounded PMMS described above	360 months	Can only capitalize arrearages ¹⁰	ALM must fully reinstate the mortgage	No fees, all late charges, fees and penalties are waived. ¹¹

⁹ Property may be occupied (owner or non-owner). See ML 2021-18 pg 8.

¹⁰ Arrearages in the new principal balance may include unpaid accrued interest; escrow advances; projected escrow shortage amount; related legal fees and foreclosure and bankruptcy costs as determined to be customary and reasonable by HUD; and one additional month to allow time for the borrower to return the signed documents for the ALM. These amounts are needed to bring the borrower current.

¹¹ Waiver of fees does not include those late charges, fees, and penalties accumulated prior to March 1, 2020.

COVID-19 FHA FORBEARANCE CALENDAR

Initial Forbearance Date	Initial Forbearance Period	Additional Forbearance Period	Forbearance Extensions	Maximum Forbearance Period
March 1, 2020 to June 30, 2020	Up to 6 months	Up to 6 months	Up to 6 months (in 3-month increments)	Up to 18 months
July 1, 2020 to Sept. 30, 2020	Up to 6 months	Up to 6 months	Up to 3 months	Up to 15 months
Oct. 1, 2020 to June 30, 2021	Up to 6 months	Up to 6 months	0	Up to 12 months
July 1, 2021 to Sept. 30, 2021	Up to 6 months	0	0	Up to 6 months

VIII. FNMA COVID-19 FORBEARANCE EXIT OPTIONS

Extending Forbearance Periods: COVID-19 forbearance is limited to 18 months without FNMA prior written approval. FNMA forbearance plans apply to principal residences, second homes & investment properties. FNMA has not set a deadline for borrowers to request COVID-19 forbearance.

Required contact with Homeowners: FNMA requires that the servicer make contact attempts no later than 30 days prior to the expiration of the forbearance plan.

Question Order	Ask Homeowner	Yes	No
1	Do you have consistent income now?	Continue with questions.	Leave this section & go to "Other loss mitigation strategies."
2	Are you ready to make your pre-forbearance payment again?	Go to Payment Deferral option below.	Continue with questions.
3	Is your pre-forbearance payment amount unaffordable for you now?	Continue with questions.	Go to Payment Deferral option below.
4	Is the loan more than 18 months delinquent?	Continue with questions.	Review Payment Deferral option below.
5	Were you delinquent as of 3/1/2020?	Go to Regular Flex Mod below.	Go to Reduced Eligibility Flex Mod below.
6	Is the loan > 90 days delinquent?	Go to Reduced Eligibility Flex Mod.	Go to Regular Flex Mod below.

Practice point: FNMA requires servicers to "determine the best possible workout option for resolving the borrower's delinquency." See FNMA, LL-2021-02. For the COVID-19 options below, the borrower had to be current or < 2 months delinquent as of 3/1/2020. If servicer cannot contact borrower, it must send the program option that borrower qualifies for within 15 days of the expiration date of the forbearance; no application is required. The *current market interest rate* (as used below) is the Freddie Mac weekly Primary Mortgage Market Survey (PMMS) rate rounded to the nearest .125%. If one of these options is accepted, the servicer must waive late charges and penalties.

FNMA COVID-19 Forbearance Exit Options to be reviewed with homeowner:

Option	Description	Considerations
COVID-19 Payment Deferral	The amount you owe for missed payments is still owed, but you do not have to pay it back until you refinance, sell, or reach your maturity date; it is deferred. The amount owed (1 – 18 mos. max of missed payments) will not accrue interest under this option. Once you agree to this option with your servicer, you will resume making the same payments that you were making before your forbearance period under the same terms.	Can homeowner afford their pre-forbearance payments? Have taxes & insurance costs increased? Has borrower missed more than 18 months of payments? Ensure the borrower has resolved the hardship.

Option	Description	Considerations
COVID-19 Reduced Eligibility Flex Mod	Use for loan that is > 90 days delinquent and for borrowers who were not delinquent on 3/1/2020. The amount you owe for missed payments is still owed and will be added to your loan balance. In addition, your interest rate will be lowered and your loan term will change to a new 40-year term to make the monthly payment more affordable for you. You will not qualify for this option if it results in a payment increase. Servicer must use the PMMS rate for the interest rate on the loan modification. A 3-month trial payment plan (TPP) is required. More eligibility than Regular flex mod below. Homeowners can use this option even if they have 3 prior flex mods, or a failed TPP in the past 12 months, or if they redefaulted on a flex mod in the past 12 months.	Can the homeowner afford a lower monthly payment? Is the homeowner's interest rate adjustable? The loan modification rate will be a fixed interest rate. Is the homeowner's interest rate higher than the current market interest rate? What is the homeowner's current maturity date? The new loan term will be for 40 years. Borrower may pay more in interest over the life of the loan because the term will be extended to 40 years (depends on the original interest rate). This option is less restrictive if the borrower previously used loan modifications.
Option	Description	Considerations
Regular Flex Modification	Use for loan that was 31 days delinquent as of 3/1/2020 or for loans that are less than 90 days delinquent. The amount you owe for missed payments is still owed and will be added to your loan balance. In addition, your interest rate will be lowered and your loan term will change to a new 40-year term to make the monthly payment more affordable for you. You may still qualify for this option even if it results in a payment increase. The target under this option is a 20% payment reduction. Servicer must use the PMMS rate for the interest rate on the loan modification. A 3-month trial payment plan (TPP) is required.	Can the homeowner afford a lower monthly payment? Is the homeowner's interest rate adjustable? The loan modification rate will be a fixed interest rate. Is the homeowner's interest rate higher than the current market interest rate? What is the homeowner's current maturity date? The new loan term will be for 40 years. Borrower may pay more in interest over the life of the loan because the term will be extended to 40 years (depends on the original interest rate).

Once the options above have been reviewed with homeowner, proceed to next steps below. If the foreclosure action has been filed, the plaintiff's attorney will be your primary point of contact instead of the servicer.

Next steps:

1. Call the homeowner's servicer for a loss mitigation evaluation. The servicer will walk the homeowner through the options available. You and your client can indicate to the servicer the option that is most suitable for the homeowner during the evaluation process. The evaluation can be completed by telephone.
2. The servicer will send the homeowner the documents necessary to complete the option selected. Review the documents for consistency with the homeowner's decision and follow the servicer's directions for execution of the documents.

3. Attorney closes the matter and homeowner starts making monthly payments based on the new agreement with the servicer.

For FNMA cases, contact their Disaster Response Network (DRN) at 1-877-542-9723. DRN can be used to assist borrowers who are financially impacted by COVID-19. The DRN has trained financial counselors who will work with borrowers to create a workable budget based on the borrower's present financial situation and assist in explaining options including obtaining unemployment benefits and any new special assistance.

IX. FREDDIE MAC (FHLMC) COVID-19 FORBEARANCE EXIT OPTIONS

Extending Forbearance Periods: COVID-19 forbearance is limited to 18 months of total delinquency without FHLMC prior written approval. FHLMC forbearance plans apply to principal residences, second homes & investment properties. FHLMC has not set a deadline for borrowers to request COVID-19 forbearance.

Required contact with Homeowners: FHLMC requires that the servicer make contact attempts no later than 30 days prior to the expiration of the forbearance plan.

Question Order	Ask Homeowner	Yes	No
1	Do you have consistent income now?	Continue with questions.	Leave this section & go to "Other loss mitigation strategies."
2	Are you ready to make your pre-forbearance payment again?	Go to Payment Deferral option below.	Continue with questions.
3	Is your pre-forbearance payment amount unaffordable for you now?	Continue with questions.	Go to Payment Deferral option below.
4	Is the loan more than 18 months delinquent?	Continue with questions.	Review Payment Deferral option below.
5	Were you delinquent as of 3/1/2020?	Go to Regular Flex Mod below.	Go to Reduced Eligibility Flex Mod below.
6	Is the loan > 90 days delinquent?	Go to Reduced Eligibility Flex Mod.	Go to Regular Flex Mod below.

Practice point: FHLMC requires servicers to "determine the best possible workout option for resolving the borrower's delinquency." See Bulletin 2021-24. For the COVID-19 options below, the borrower had to be current or < 2 months delinquent as of 3/1/2020. If servicer cannot contact borrower, it must send the program option that borrower qualifies for within 15 days of the expiration date of the forbearance; no application is required. The *current market interest rate* (as used below) is the Freddie Mac weekly Primary Mortgage Market Survey (PMMS) rate rounded to the nearest .125%. If one of these options is accepted, the servicer must waive late charges and penalties.

FHLMC COVID-19 Forbearance Exit Options to be reviewed with homeowner:

Option	Description	Considerations
COVID-19 Payment Deferral	The amount you owe for missed payments is still owed, but you do not have to pay it back until you refinance, sell, or reach your maturity date; it is deferred. The amount owed (1 – 18 mos. max of missed payments) will not accrue interest under this option. Once you agree to this option with your servicer, you will resume making the same payments that you were making before your forbearance period under the same terms.	Can homeowner afford their pre-forbearance payments? Have taxes & insurance costs increased? Has borrower missed more than 18 months of payments? Ensure the borrower has resolved the hardship.
COVID-19 Reduced Eligibility Flex Mod	Use for loan that is > 90 days delinquent and for borrowers who were not delinquent on 3/1/2020. The amount you owe for missed payments is still owed and will be added to your loan balance. In addition, your interest rate will be lowered and your loan term will change to a new 40-year term to make the monthly payment more affordable for you. You will not qualify for this option if it results in a payment increase. Servicer must use the PMMS rate for the interest rate on the loan modification. A 3-month trial payment plan (TPP) is required. More eligibility than Regular flex mod below. Homeowners can use this option even if they have 3 prior flex mods, or a failed TPP in the past 12 months, or if they redefaulted on a flex mod in the past 12 months.	Can the homeowner afford a lower monthly payment? Is the homeowner's interest rate adjustable? The loan modification rate will be a fixed interest rate. Is the homeowner's interest rate higher than the current market interest rate? What is the homeowner's current maturity date? The new loan term will be for 40 years. Borrower may pay more in interest over the life of the loan because the term will be extended to 40 years (depends on the original interest rate). This option is less restrictive if the borrower previously used loan modifications.
Regular Flex Modification	Use for loan that was 31 days delinquent as of 3/1/2020 or for loans that are less than 90 days delinquent. The amount you owe for missed payments is still owed and will be added to your loan balance. In addition, your interest rate will be lowered and your loan term will change to a new 40-year term to make the monthly payment more affordable for you. You may still qualify for this option even if it results in a payment increase. The target under this option is a 20% payment reduction. Servicer must use the PMMS rate for the interest rate on the loan modification. A 3-month trial payment plan (TPP) is required.	Can the homeowner afford a lower monthly payment? Is the homeowner's interest rate adjustable? The loan modification rate will be a fixed interest rate. Is the homeowner's interest rate higher than the current market interest rate? What is the homeowner's current maturity date? The new loan term will be for 40 years. Borrower may pay more in interest over the life of the loan because the term will be extended to 40 years (depends on the original interest rate).

Once the options above have been reviewed with homeowner, proceed to next steps below. If the foreclosure action has been filed, the plaintiff's attorney will be your primary point of contact instead of the servicer.

Next steps:

1. Call the homeowner's servicer for a loss mitigation evaluation. The servicer will walk the homeowner through the options available. You and your client can indicate to the servicer the option that is most suitable for the homeowner during the evaluation process. The evaluation can be completed by telephone.
2. The servicer will send the homeowner the documents necessary to complete the option selected. Review the documents for consistency with the homeowner's decision and follow the servicer's directions for execution of the documents.
3. Attorney closes the matter and homeowner starts making monthly payments based on the new agreement with the servicer.

For Freddie Mac free phone assistance is available through our national Freddie Mac Borrower Help Network at 877-300-4179.

Freddie Mac contracts with **Balance**, a national nonprofit organization, to help borrowers avoid foreclosure. Freddie Mac borrowers may contact Balance at 877-442-7981.

Notice to Homeowner:

If Freddie Mac owns your mortgage and you are 30 – 60 days behind on your mortgage payment, you may receive a call to discuss your financial situation and available options for help.

If you are 90+ days behind on your payment, you may receive a call from one of our **Borrower Help Centers** to provide options to your financial challenges and assess your options to avoid foreclosure.

X. VA OPTIONS FOR OWNER-OCCUPANTS

September 30, 2021 is the VA deadline to request a COVID-19 forbearance. Some of these options are available whether or not the COVID-19 pandemic is the reason for the default.

Question Order	Ask Homeowner	Yes	No
1	Do you occupy the property?	See below.	Go to Other Loss Mitigation Strategies.
2	Was the default related to the COVID-19 pandemic?	Go to COVID-19-VAPCP program below.	Go to VA Disaster Modification, VA Disaster Extend Modification, or Loan Deferment options below.
3	Can the Homeowner afford the same payment they were making prior to the default?	Go to VA Disaster Extend Modification, Loan Deferment, or COVID-VAPCP below.	Go to VA Disaster Modification below.

Practice point: The VA offers “Loan Technician” assistance to all VA borrowers for all financial difficulties, whether related to COVID-19 or not. Borrowers should contact a VA Regional Loan Center at **1-877-827-3702**; **Option 8** will put the borrower in touch with a VA Loan Technician. We recommend calling this number with your client for a full loss mitigation evaluation by a VA Loan Technician. The loan technician review will help to ensure that Homeowner has received a reasonable opportunity to retain home-ownership and avoid foreclosure.

With VA loans, the lender must consider all home retention options and work with the Homeowner to select the best option that is in the Homeowner’s financial interest. Where home retention options are not feasible, lenders should consider alternatives to foreclosure. See Circular 26-21-07; Change 1, 6/3/2021.

The VA also issues guidance about its rules in its Circulars. For example, see Circular 26-21-10, 6/25/2021, for COVID-19-related guidance. Questions about VA Circulars can be sent to the valerihelpdesk.vbaco@va.gov.

VA COVID-19 Forbearance Exit Options to be reviewed with homeowner:

Option	Description	Considerations
VA Disaster Modification	A loan modification that can be offered regardless of whether Homeowner is in forbearance and regardless of whether the pandemic caused the default. Talks with a VA loan technician or see 38 CFR § 36.4315. No VA pre-approval is required.	This option expires on the date that is 18 mos. after the date the national emergency ends. Is there reliable income? Can the Homeowner afford the modified payment?

Option	Description	Considerations
VA Disaster Extend Modification	A loan modification that can be offered regardless of whether Homeowner is in forbearance and regardless of whether the pandemic caused the default. Talks with a VA loan technician or see 38 CFR § 36.4315. The loan's maturity date is extended up to 18 months to resolve the balance resulting from missed payments. No VA pre-approval is required.	This option expires on the date that is 18 mos. after the date the national emergency ends. Is there reliable income? Can the Homeowner afford the modified payment?
Loan Deferment	This option defers payment of the total amount of missed payments to the loan's maturity date or until the loan is refinanced or the property is sold. Deferment is not available if the Homeowner also needs a payment reduction going forward. Deferment of the missed payments is available to homeowners who invoked loan forbearance under Section 4022 of CARES Act (Pub. L. 116-136). In addition, lenders can offer loan deferment in cases where a payment, or more, was missed regardless of whether the payment was subject to a CARES Act forbearance.	Can the Homeowner resume paying the same monthly payment that they owed prior to the default? Is there reliable income?
COVID-19 Veterans Assistance Partial Claim Payment Program (COVID-VAPCP)	Available from July 27, 2021 to October 28, 2022 & can only be used one time. Missed payments are reimbursed to lender by VA and VA carries a second mortgage on the property at 0%. The balance on the second mortgage is not due until the Homeowner refinances, pays the original loan in full, or sells/transfers title to the property. The borrower may make payments without penalty at any time before the loan becomes payable.	Loan must have been current or less than 30 days past due on March 1, 2020. Homeowner received a COVID-19 forbearance and missed at least one payment. The property is occupied as your residence. Has Homeowner recovered from the hardship that caused the default? Is there reliable income?

Once the options have been reviewed with homeowner, proceed to next steps below. If the foreclosure action has been filed, the plaintiff's attorney will be your primary point of contact instead of the servicer. **Next steps:**

1. Call the homeowner's servicer for a loss mitigation evaluation. The servicer will walk the homeowner through the options available. You and your client can indicate to the servicer the option that is most suitable for the homeowner during the evaluation process. The evaluation can be completed by telephone.
2. The servicer will send the homeowner the documents necessary to complete the option selected. Review the documents for consistency with the homeowner's decision and follow the servicer's directions for execution of the documents.
3. Attorney closes the matter and homeowner starts making monthly payments based on the new agreement with the servicer.

XI. USDA LOSS MITIGATION OPTIONS

September 30, 2021 is the USDA deadline to request a COVID-19 forbearance.

Question Order	Ask Homeowner	Yes	No
1	Do you occupy the property?	See below.	Go to Other Loss Mitigation Strategies.

Practice point: To inquire about forbearance on a USDA direct home loan, contact Rural Development's Customer Service Center at **1-800-793-8861** or rdquestion@stl.usda.gov. Questions regarding guaranteed home loan policy may be directed to the National Office Division at **sfhglpservicing@usda.gov** or **(202) 720-1452**. For more information on USDA Rural Development's actions to support customers impacted by COVID-19, visit www.rd.usda.gov/coronavirus.

USDA operates differently than other federally-related loans. USDA typically reamortizes the loan by taking the arrearage, adding it to the unpaid principal balance, and then determining if the new loan payment schedule complies with USDA program requirements. Reamortization may require some documentation or a written request. Streamlined options (no documentation required) may also be available and approved over the phone. Call USDA for assistance and review the homeowner's loss mitigation options. Once the options have been reviewed with homeowner, proceed to next steps below. If the foreclosure action has been filed, the plaintiff's attorney will be your primary point of contact instead of the servicer, but you can always call the agency to verify information.

COVID-19 Update - White House press release July 23, 2021. The **USDA COVID-19 Special Relief Measure** provides new alternatives for borrowers to help them achieve up to a **20% reduction** in their monthly principal and interest payments. New options include an interest rate reduction, term extension and a mortgage recovery advance, which can help cover past due mortgage payments and related costs. Borrowers will first be assessed for an **interest rate reduction** and if additional relief is still needed, the borrowers will be considered for a **combination rate reduction and term extension**. In cases where a combination of rate reduction and term extension is not enough to achieve a 20% payment reduction, a third option **combining the rate reduction and term extension with a mortgage recovery advance will be used to reach the target payment**.

Next steps:

1. Call the homeowner's servicer or plaintiff's attorney for a loss mitigation evaluation.
2. The servicer will send the homeowner the documents necessary to complete the loss mitigation option. Review the documents for consistency with the homeowner's decision and follow the servicer's directions for execution of the documents.
3. Request documentation of any USDA reamortization and/or a copy of any reamortization agreement. Sometimes a servicer will attach an addendum to the promissory note specifying that a reamortization agreement is in place; request a copy of any such addendum or modification to the promissory note.
4. Attorney closes the matter and homeowner starts making monthly payments based on the new agreement with the servicer.

XII. LOSS MITIGATION OPTIONS FOR PRIVATE MORTGAGES

1. Please see CFPB section of this guide.
2. Please see QWR section of this guide.

For privately held mortgages, loss mitigation options depend on each individual servicer and investor. Servicers must be contacted to learn what options, if any, are available to the borrower. If the foreclosure action has been filed, the plaintiff's attorney will be your primary point of contact instead of the servicer.

Question Order	Ask Homeowner	Yes	No
1	Have you completed a loss mitigation application?	Contact servicer/plaintiff's counsel regarding status of application.	Contact servicer/plaintiff's counsel to obtain a loss mitigation application.

Practice points: Regulation X applies to privately held mortgages.¹ Therefore, please review the CFPB section of this guide to learn borrower protections and servicer requirements under Regulation X. The federally-backed loans are also subject to Regulation X, but the government agencies tend to have more stringent borrower protections than those provided under Reg. X.

Servicer rules – Servicer rules apply in most cases, but specific investors may have additional rules regarding loss mitigation procedures. Investor rules – In addition to servicer rules, the servicer may have to follow specific rules required by the loan's owner/investor ("investor rules").

To obtain information and for difficulties making contact with a private servicer, please review QWR (Qualified Written Request) and sample letter to servicer provided in this guide.

For issues with private servicers, the borrower may file a complaint at <https://www.consumerfinance.gov/complaint/>.

Next steps:

1. Call the homeowner's servicer (or plaintiff's attorney if the foreclosure action has been filed) for a loss mitigation evaluation. The servicer will walk the homeowner through the options available. You and your client can indicate to the servicer the option that is most suitable for the homeowner during the evaluation process. The evaluation can be completed by telephone.
2. The servicer will send the homeowner the documents necessary to complete the option selected. Review the documents for consistency with the homeowner's decision and follow the servicer's directions for execution of the documents.
3. Attorney closes the matter and homeowner starts making monthly payments based on the new agreement with the servicer.

¹ Regulation X applies to all servicers except "small servicers." Generally, servicers that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated. Small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), are not subject to these requirements. 12 CFR 1024.30(b)(1).

XIII. OTHER LOSS MITIGATION STRATEGIES

Practice Point: These non-retention options may apply when the Homeowner does not want to keep the property or when the Homeowner cannot afford to keep the property. Each strategy will negatively affect the Homeowner’s credit score. Reminder – the homeowner should consult with an accountant if any part of the loan balance is forgiven. The most significant consideration with each of these options is to determine whether the homeowner will be fully released from all personal liability.

Exit Strategy	Description	Considerations
HUD Pre-Foreclosure Sale (PFS)(also known as a short sale)	Only available to FHA-insured loans. Must get pre-approval from HUD. Contact servicer for more information. Homeowner handles the property sale.	Will HUD approve a PFS in this case? How long will it take to sell the property?
Traditional Sale/ Pre-Foreclosure Sale	A homeowner can sell the property until it is sold at auction or prior to the sale date in the foreclosure proceeding. This option depends on the Homeowner’s equity position, the current market conditions, and the time available because closing on a traditional sale typically takes 4 to 6 weeks <i>after</i> an offer is accepted.	Does homeowner have equity? How long will it take to sell the property? To estimate how long getting an offer will take, you can check with a real estate broker and ask for the average amount of days on the market for the property’s location.
Short Sale	A short sale is a sale that does not cover the debt owed. A short sale may be available if a lender agrees to accept a mortgage payoff amount less than what is owed in order to facilitate a sale of the property by a financially distressed owner. The homeowner handles the property sale. The lender may or may not forgive the remaining balance of the loan. Lender must approve the sale. Contact lender for more information. <i>See also, “deficiency waiver,”</i> below.	Does the mortgage balance exceed the value of the property? Will the lender forgive the remaining balance on the loan? Review how this option will affect homeowner’s credit. Will homeowner be released from personal liability? Is any relocation assistance available? Will any tax form be issued to the IRS? Can a move-out date be negotiated?
Deed in Lieu of Foreclosure	A deed in lieu of foreclosure is a document that transfers the title of a property from the property owner to their lender in exchange for being relieved of the mortgage debt. A deed in lieu of foreclosure can release you from your mortgage responsibilities and allow you to avoid a foreclosure on your credit report. When you hand over the deed, the lender releases its lien on the property. This allows the lender to recoup some of the losses without forcing you into foreclosure.	Will the lender forgive the remaining balance on the loan? Review how this option will affect homeowner’s credit. Will homeowner be fully released from all personal liability? Is any relocation assistance available? Will any tax form be issued to the IRS? Can a move-out date be negotiated?

Exit Strategy	Description	Considerations
Stipulated <i>In Rem</i> Judgment	An " <i>in rem</i> " judgment means that the judgment is only against the property. This type of judgment allows the bank to continue with the foreclosure process, acquire title to the property, and evict whoever lives there. An <i>in rem</i> judgment prohibits the lender from pursuing any monetary liability against the Homeowner personally.	Will the lender forgive the remaining balance on the loan? Review how this option will affect homeowner's credit. Is any relocation assistance available? Will any tax form be issued to the IRS? Can a move-out date be negotiated?
Deficiency Waiver	A deficiency waiver is a written agreement between the homeowner and the bank, indicating that the bank will not attempt to collect any balance owed from the homeowner.	Will the loan be paid off from the proceeds of the foreclosure sale? Will there be any income tax consequence for the homeowner? Advise the homeowner to consult with their accountant if a deficiency waiver is granted.
Foreclosure and Cash for Keys	If foreclosure is imminent, and Homeowner is considering a deed in lieu of foreclosure, some lenders are willing to offer "cash for keys," whereby the lender will actually pay the homeowner to vacate the home in a timely fashion. The money received in exchange is intended to pay for relocation costs. OR If Homeowner loses the property in a foreclosure sale, the new owner might offer a lump-sum of money to get the homeowner to voluntarily move out. This kind of transaction is called "cash for keys." If Homeowner moves out by the deadline and leaves the property in satisfactory condition, then they get the money.	Will the lender forgive the remaining balance on the loan? Review how this option will affect homeowner's credit. Will homeowner be released from personal liability? Is any relocation assistance available? Will any tax form be issued to the IRS? Can a move-out date be negotiated?

XIV. POSSIBLE AFFIRMATIVE DEFENSES & COUNTERCLAIMS

Affirmative Defenses	Counterclaims
Lack of standing	Breach of good faith and fair dealing
Insufficient service of process	Wrongful foreclosure
Statute of limitations	Tortious interference with contractual relations
Failure to provide required notice of default	Violations of RESPA
Accord and satisfaction; payment	Violations of Regulation X
Defective affidavit (personal knowledge, eg.) or defective declaration	Violations of the Truth in Lending Act
Laches	Violations of the New Mexico Home Loan Protection Act
Waiver	Violations of Federal Debt Collection Practices Act
Equitable estoppel	Violations of the New Mexico Unfair Practices Act
Fraud	Fraud
Discharge in Bankruptcy	Violations of the Civil Relief Act – for military service members
Illegality	
Unclean hands	
Failure to mitigate damages	
FHA servicing prerequisites	
Improper or incorrect accounting	

XV. FEDERAL LAW – MORTGAGE SERVICING & LOSS MITIGATION

Consumer Protections for Borrowers

Practice Point: RESPA and Regulation X apply to all servicers except small servicers.¹ These sources of law are especially useful in foreclosure cases when the borrower has a privately-held mortgage because all of the federally-backed mortgage types have more stringent consumer protections than are required by law.

1. Real Estate Settlement Procedures Act (RESPA)

Citation: Public Law 93-533, 88 Stat. 1724 (codified as amended at 12 U.S.C. 2601 *et seq.*) (1974).

The consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers prevent avoidable costs and fees, and facilitating review for foreclosure avoidance options.

2. Regulation X

Citation: 12 CFR Part 1024; amended April 9, 2021, 86 FR 18840. Please review Section 1024.41, which specifically addresses loss mitigation procedures that all servicers must follow.

3. 2021 Temporary Amendments to Regulation X

Effective August 31, 2021 to December 31, 2021:

- A. Servicer must follow reasonable diligence requirements to obtain a complete loss mitigation application before the end of any COVID-19 forbearance.
- B. Servicer must complete loss mitigation application evaluation prior to foreclosure filing.
- C. Servicer may evaluate borrower without a complete loss mitigation application when certain conditions are met. [Temporary exception to § 1024.41(c)(2)].
- D. Servicer must attempt live contact 45-10 days prior to forbearance expiration date. Servicer must also make required disclosures during the live contact, including the identification of one homeownership counseling resource.

4. The Consumer Financial Protection Bureau (CFPB)

CFPB enforces RESPA & Regulation X, along with state attorneys general. Borrowers can file complaints for violations at <https://www.consumerfinance.gov/complaint/getting-started/> and with the Office of the New Mexico Attorney General.

¹ Small servicers are exempt from Regulation X and defined as a servicer that services 5,000 or fewer consumer mortgages which they or an affiliate own or originated.

XVI. HOMEOWNER HELP RESOURCES

- **HOUSING COUNSELING AND LEGAL SERVICES**

- United South Broadway Corporation (USBC)
 - (505) 764-8867
 - <https://www.unitedsouthbroadway.org/>
 - 1500 Walter St., SE, Albuquerque, NM 87102
- Southwest Neighborhood Housing Services
 - (505) 243-5511
 - <https://www.nhsfalb.org/>
 - 6301 Fourth St., NW, Albuquerque, NM 87107
- Senior Citizens Law Office (SCLO)
 - (505) 265-2300
 - <http://sclonm.org/>
 - 4317 Lead Ave., SE, Suite A, Albuquerque, NM 87108
- New Mexico Legal Aid (NMLA)
 - (833) 545-4357
 - <https://www.newmexicolegalaid.org/>
 - 505 Marquette Ave., NW, Albuquerque, NM 87102
- New Mexico Center on Law & Poverty
 - <http://nmpovertylaw.org/find-services-and-benefits/legal-help/>

- **ATTORNEY REFERRAL**

- State Bar of New Mexico Lawyer Referral
 - (505) 797-6066 or (800) 876-6227, option 2
 - <https://www.sbnm.org/For-Public/I-Need-a-Lawyer/State-Bar-General-Referral>
- Legal Resources for the Elderly Program (55+)
 - (505) 797-6005 or (800) 876-6657
 - <https://www.sbnm.org/For-Public/I-Need-a-Lawyer/Legal-Resources-for-the-Elderly>

- Albuquerque Bar Association Lawyer Referral
 - (505) 243-2615

- **PUBLIC ASSISTANCE FUNDS**
 - New Mexico Homeowner Assistance Fund
 - (505) 308-4206 or (866) 488-0498
 - <https://housingnm.org/new-mexico-homeowner-assistance-fund>

- **FEDERAL GOVERNMENT RESOURCES**
 - **Consumer Financial Protection Bureau (CFPB)**
 - If you are a homeowner struggling to pay your mortgage, you may have more time to seek mortgage forbearance and foreclosure relief. Learn about mortgage relief options during the coronavirus pandemic.
 - <https://go.usa.gov/xHXQW>

 - **HUD**
 - https://www.hud.gov/coronavirus?utm_medium=email&utm_source=govdelivery

 - https://www.hud.gov/program_offices/housing/sfh/nsc/lossmit

 - https://www.hud.gov/topics/avoiding_foreclosure

 - **FNMA**
 - <https://www.fanniemae.com/here-help-homeowners>

 - <https://www.knowyouroptions.com/loanlookup>

 - **Freddie Mac**
 - <https://myhome.freddie.mac.com/getting-help/>

 - <https://myhome.freddie.mac.com/getting-help/relief-for-homeowners.html>

 - <https://loanlookup.freddie.mac.com/>

- **USDA**
 - <https://www.rd.usda.gov/newsroom/news-release/usda-extends-foreclosure-and-eviction-moratorium-single-family-housing-direct>

- **VA**
 - <https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/>
 - If you're having difficulty making your mortgage payment, contact your loan servicer right away. This is your chance to find a solution that might work for your scenario. If you're nervous about contacting your servicer, or if you'd like our help and advice, please contact a VA loan technician at [877-827-3702](tel:877-827-3702).

XVII. RELATED CASE LAW

United States Supreme Court

BFP v. Resol. Tr. Corp., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994). “It is beyond question that an essential state interest is at issue here: We have said that the ‘general welfare of society is involved in the security of the titles to real estate’ and the power to ensure that security ‘inheres in the very nature of [state] government.’” 511 U.S. 531, 544 (citing *American Land Co. v. Zeiss*, 219 U.S. 47, 60 (1911)).

Tenth Circuit

Note: There are currently only two decisions with issues involving Regulation X and both are unpublished. In both of the following cases, the Tenth Circuit relied on an 11th Circuit decision regarding RESPA/Regulation X issues. See *Lage v. Ocwen Loan Servicing LLC*, 839 F.3d 1003.

Morgan v. Carrington Mortg. Servs., No. 17-7014 (10th Cir. Dec. 12, 2017). Borrower made claims under the Fair Housing Act, the Real Estate Settlement Procedures Act (RESPA), and the Federal Debt Collections Practices Act (FDCPA). The Tenth Circuit affirmed the Oklahoma district court’s decision to dismiss all claims.

Muathe v. Wells Fargo Bank, No. 19-3055 (10th Cir. April 3, 2020). Borrower made claims under RESPA and FDCPA. The Tenth Circuit affirmed the Kansas district court’s decision to dismiss all claims.

New Mexico

Bank of New York v. Romero, 2014-NMSC-007 (Issue - Standing).

Deutsche Bank Nat'l Trust Co. v. Johnston, 2016-NMSC-013 (Issue – Standing; at the time of filing, P had both physical possession and the right to enforcement through either a proper indorsement or a transfer by negotiation.).

PNC Mortgage v. Romero, 2016-NMCA-064 (Issue - Standing).

Deutsche Bank Nat'l Trust Co. v. Beneficial N.M. Inc., 2014-NMCA-090, 335 P.3d 217 (Issues - Standing and Home Loan Protection Act).

HSBC Bank USA v. Wiles, 2020-NMCA-035, *cert. denied*, 2020-NMCERT-___ (No. S-1-SC-38290, June 8, 2020) (Issues - Summary judgment, standing).

Los Alamos Nat'l Bank v. Velasquez, 2019-NMCA-040, *cert. denied*, 2019-NMCERT- ___ (No. S-1-SC-37688, Aug. 5, 2019). (Issue – Standing; possession of the promissory note).

Federal Nat'l Mortg. Ass'n v. Chiulli, 2018-NMCA-054 (Issue – Discovery sanction, affirming dismissal of a foreclosure action as a discovery sanction against servicer for failing to provide discovery relevant to the defendant’s defenses).

Bank of New York V. Romero, 2011-NMCA-110, 150 N.M. 769, 266 P.3d 638 (Issues - Home Loan Protection Act and UPA).

Dollens v. Wells Fargo Bank, 2015-NMCA-096 (Issues - reasonableness of servicer fees, breach of contract in application of mortgage payments, and UPA violations); *Dollens v. Wells Fargo Bank*, slip op No. A-1-CA-37194 (2020) – only punitive damages analysis.

Bank of New York v. Romero, 2016-NMCA-091.

Armstrong V. Csurilla, 1991-NMSC-081, 112 N.M. 579, 817 P.2d 1221 (S. Ct. 1991). (Issue - Application of statute; while Sections 39-5-1 through 39-5-3 and 39-5-15 through 39-5-23 apply generally to foreclosures, Sections 39-5-5 through 39-5-13 apply only to sales and levies under writs of execution.).

Production Credit Ass'n V. Williamson, 1988-NMSC-041, 107 N.M. 212, 755 P.2d 56 (S. Ct. 1988) (Issue - Notice of foreclosure sale).

BAC Home Loans Servicing LP v. Smith, 2016-NMCA-025 (Issue - Standing).

Production Credit Ass'n V. Williamson, 1988-NMSC-041, 107 N.M. 212, 755 P.2d 56 (S. Ct. 1988). (Issue – Notice).

Federal Land Bank V. Burgett, 1982-NMSC-030, 97 N.M. 519, 641 P.2d 1066 (S. Ct. 1982) (Issue – Redemption).

Crown Life Ins. Co. V. Candlewood, Ltd., 1991-NMSC-090, 112 N.M. 633, 818 P.2d 411 (S. Ct. 1991) (Issue - Inequitable foreclosure sale).

Western Bank V. Fluid Assets Dev. Corp., 1991-NMSC-020, 111 N.M. 458, 806 P.2d 1048 (S. Ct. 1991) (Issue – junior lienholders).

Flagstar Bank V. Jonathan K. Licha, 2015-NMCA-086, 356 P.3d 1102 (Issues - standing and Home Loan Protection Act).

Fed. Nat'l Mortg. Ass'n v. Trissell, slip op. A-1-CA-37395 (NM Ct of Appeals, May 24, 2021) (Issues - Summary judgment, burden of proof, standing and Home Loan Protection Act).

Los Alamos Nat'l Bank v. Velasquez, 2019-NMCA-040, cert. denied. (Issue – Standing. In a foreclosure action, where evidence established that Fannie Mae was the owner of the mortgage loan and plaintiff bank was the loan servicer, and where plaintiff provided evidence that on the day it filed its complaint for foreclosure, it was in possession of the original promissory note, which had been indorsed in blank a few days after it was executed by defendant homeowner, plaintiff, as the holder of the promissory note, was among the entities authorized by statute to enforce the note, notwithstanding the fact that it did not own the note.).

Selected NM OneSource Annotations from NMSA 1978

Applicability of article. — While [39-5-1](#) to [39-5-3](#) and [39-5-15](#) to [39-5-23](#) NMSA 1978 apply generally to foreclosures, [39-5-5](#) to [39-5-13](#) NMSA 1978 apply only to sales and levies under writs of execution. *Armstrong v. Csurilla*, [1991-NMSC-081](#), [112 N.M. 579](#), [817 P.2d 1221](#). This section does not apply to court-supervised foreclosure sales. *Armstrong v. Csurilla*, [1991-NMSC-081](#), [112 N.M. 579](#), [817 P.2d 1221](#).

Notice in foreclosure sales. — With respect to the kind of notice to be employed in cases of sales under execution and foreclosure, this section, rather than Rule 1-005, governs. *Prod. Credit Ass'n v. Williamson*, [1988-NMSC-041](#), [107 N.M. 212](#), [755 P.2d 56](#).

Newspaper publication sufficient. — Where notices of sale are published in a newspaper printed in the county where the property is situate, this section does not require the posting of notices. *Pecos Valley Lumber Co. v. Freidenbloom*, [1917-NMSC-067](#), [23 N.M. 383](#), [168 P. 497](#).

Effect of irregularity. — Foreclosure sales made otherwise than as herein provided are irregular and erroneous, but not void. *McCloskey v. Shortle*, [1937-NMSC-005](#), [41 N.M. 107](#), [64 P.2d 1294](#).

Mortgagor waives irregularities by failure to object until after trial court has lost jurisdiction to set aside its confirmation of sale. *McCloskey v. Shortle*, [1937-NMSC-005](#), [41 N.M. 107](#), [64 P.2d 1294](#).

Confirmation of conditional bid. — A district court had power to confirm a mortgage foreclosure sale by master, notwithstanding bid was conditional, since court could in its original decree provide for payment in the same way. *McCloskey v. Shortle*, [1937-NMSC-005](#), [41 N.M. 107](#), [64 P.2d 1294](#).

Due process requirements. — Where a party with a recorded interest in property has been properly served and has had actual notice of a complaint in foreclosure and participates in the proceedings to the extent of approving a judgment and decree of foreclosure directing sale of the foreclosed property, and thereafter is on constructive notice of the time and place of sale, he has received all due process to which he is entitled before being deprived of his interest in the property. *Production Credit Ass'n v. Williamson*, [1988-NMSC-041](#), [107 N.M. 212](#), [755 P.2d 56](#).

Redemption by cotenant. — A foreclosure sale does not extinguish a cotenancy until the time for redemption has passed and one cotenant's redemption inures to the benefit of the other cotenant, subject to the right of contribution. *Bankers Trust Co. v. Woodall*, [2006-NMCA-129](#), [140 N.M. 567](#), [144 P.3d 126](#).

Hearing on a certificate of redemption. — In the absence of a debtor's compliance with the redemption statute, which requires the debtor to petition the district court and to deposit the sum of money required by statute, the district court is not required to hold a hearing and issue a certificate of redemption. *Chapel v. Nevitt*, [2009-NMCA-017](#), [145 N.M. 674](#), [203 P.3d 889](#).

Extension of the redemption period. — A debtor must comply with the redemption statute before equity may be invoked to extend the redemption period. *Chapel v. Nevitt*, [2009-NMCA-017](#), [145 N.M. 674](#), [203 P.3d 889](#).

A court may use its equitable power to grant an extension to the redemption period where the debtor fulfills all of the requirements of the redemption statute, but the redemption is not complete because of a clerical error or technical mix-up or where there has been fraud, deceit or collusion on the part of the person against whom relief is sought. *Chapel v. Nevitt*, [2009-NMCA-017](#), [145 N.M. 674](#), [203 P.3d 889](#).

A junior mortgagee who forecloses its mortgage, along with foreclosure of the senior mortgage, and obtains a deficiency judgment has a right to redeem. *Mortgage Elec. Registration Syss., Inc. v. Montoya*, [2008-NMCA-081](#), [144 N.M. 264](#), [186 P.3d 256](#). (decided under former law)

First person with right of redemption to file for redemption has priority over all others seeking to redeem the property after a mortgage foreclosure. *HSBC Bank USA v. Fenton*, [2005-NMCA-138](#), [138 N.M. 665](#), [125 P.3d 644](#).

Redemption in entirety. — It is a general rule that a mortgage is an entire thing, and must be redeemed in its entirety, and that a mortgagee cannot be required to divide either his debt or his security. *Seasons, Inc. v. Atwell*, [86 N.M. 751](#), [527 P.2d 792](#) (1974); *Springer Corp. v. Kirkeby-Natus*, [80 N.M. 206](#), [453 P.2d 376](#) (1969).

Improvements. — The redemption statute does not allow the purchaser to recover for any funds paid for improvements. *Chase Manhattan Bank v. Candelaria*, [2004-NMSC-017](#), [135 N.M. 527](#), [90 P.3d 985](#).

Reimbursement for improvements. — This section, while providing the exclusive procedure and remedy for redemption, **does not bar** a court from ordering a redeemer to reimburse a purchaser at foreclosure for improvements made by that purchaser before a petition for a certificate of redemption is filed or served, and the court had the authority to order such reimbursement under [42-4-17](#), NMSA 1978. *Chase Manhattan Bank v. Candelaria*, [2004-NMCA-112](#), [136 N.M. 332](#), [98 P.3d 722](#), rev'd on other grounds, [2004-NMSC-017](#), [135 N.M. 527](#), [90 P.3d 985](#).

Reduction of redemption period. — Although the legislature initially granted a nine-month period of redemption for junior lienholders, the legislature also intended to give the parties to the instrument being foreclosed the power to

reduce the statutory period to not less than one month by entering into a written agreement contained in the instrument being foreclosed. *Sun Country Sav. Bank v. McDowell*, [1989-NMSC-043](#), [108 N.M. 528](#), [775 P.2d 730](#).

Computation of redemption period. — A calendar month runs from the date of the court order triggering the right of redemption to the corresponding date of the subsequent month; this rule corresponds to the preference expressed in 12-2A-7C NMSA 1978 (enacted after this section), conforms with the requirements of Rule 1-006A NMRA governing court orders, and is consistent with the common understanding of when a one-month period, beginning on a certain date, will expire. *U.S. Bank Nat'l Ass'n v. Martinez*, [2003-NMCA-151](#), [134 N.M. 665](#), [81 P.3d 608](#), cert. denied, sub nom. *Bustos v. Haldeman*, 2003-NMCERT-003, 135 N.M. 51, 84 P.3d 668.

Extension of redemption period. — There are two situations in which a court will use its equitable powers to grant a debtor an extension of the redemption period. In the first type of situation, the debtor fulfills all of the requirements of the redemption statute, but redemption is not complete because of a clerical error or technical mix-up. In the second type of situation, courts look for evidence of fraud, deceit, or collusion to justify the grant of a redemption period extension. *Brown v. Trujillo*, [2004-NMCA-040](#), [135 N.M. 365](#), [88 P.3d 881](#), cert. denied, 2004-NMCERT-004, 135 N.M. 562, 91 P.3d 603.

Motion for extension of redemption period must be filed before judgment or decree of foreclosure is entered. — In a foreclosure action, where appellant moved for a thirty-day extension of the one month redemption period so that he could assign his right to redeem the foreclosed property, the district court did not err in denying appellant's motion to extend on the grounds that the motion was not filed before the foreclosure judgment was entered, because the deadline set forth in [39-5-19](#) NMSA 1978 does not render the opportunity to redeem, or at least to request an extension of the redemption period, unreasonable, and appellant, having been aware of the complaint for foreclosure for six months before the default judgment was entered, was not deprived of a reasonable opportunity to request an extension of the redemption period. *Wells Fargo Bank v. Pyle*, [2016-NMCA-046](#).

Substantial compliance with statutory redemption requirements. — In a case involving assignment of redemption rights, where appellee Santa Fe Community Housing Trust (Trust) filed a redemption petition with the district court, thus meeting the first requirement of the redemption statute, and attempted to tender a cashier's check, a fully negotiable instrument, for the entire purchase price of the property, which was refused by the district court clerk absent a court order, and where appellee filed a redemption petition, deposited a fully negotiable instrument for the fully required amount of the foreclosure sale within the redemption period, and served his petition on decedent's heirs and the foreclosing bank, **both parties substantially complied with the redemption statute requirements and both party's redemption petitions were valid, even though appellant failed to deposit any sum of money in the district court registry and appellee failed to serve his petition on the Trust, both of which failures amounted to "technical deficiencies"**. *Kaushal v. Santa Fe Cmty. Housing Trust*, [2021-NMCA-010](#).

Assignee takes free of judgment liens. — Because judgment liens attach only to the property of the debtor, the mortgagor's assignee takes property redeemed after foreclosure free of all prior junior judgment liens not his own. *Turner v. Les File Drywall, Inc.*, [117 N.M. 7](#), [868 P.2d 652](#) (1994).

Redemption as estoppel. — The redemption of real estate from an execution sale by a judgment debtor estops him from questioning the validity of such sale. *Springer v. Wasson*, [25 N.M. 379](#), [183 P. 398](#) (1919).

Failure to set aside sale held erroneous. — Trial court erred in refusing to set aside a foreclosure sale based on inadequacy of price and other equitable circumstances, where the court made no finding as to the value of the property or even as to the approximate range of its worth, although, even under the lowest estimate, the purchase price was less than 23 percent of value, and in all probability represented only about 15 percent of the property's worth. *Crown Life Ins. Co. v. Candlewood, Ltd.*, [112 N.M. 633](#), [818 P.2d 411](#) (1991).

Award of interest to date of sale not permitted. — The trial court cannot award interest from the date of the foreclosure judgment to the date of the foreclosure sale. *Fed. Land Bank v. Burgett*, [97 N.M. 519](#), [641 P.2d 1066](#) (1982).

Foreclosure action and quiet title claim triable in single proceeding. — It would be logically inconsistent to hold that it is permissible to try both a foreclosure action and a quiet title claim in a single proceeding if both are asserted by the plaintiff, but it is not permissible to join them in one case if one is asserted by the plaintiff and the other arises in a defendant's counterclaim or cross-claim; this incongruous holding would be contrary to the purpose of Rule 13, N.M.R. Civ. P. (now Rule [1-013 NMRA](#)). *Ortega, Snead, Dixon & Hanna v. Gennitti*, [1979-NMSC-056](#), [93 N.M. 135](#), [597 P.2d 745](#).

42-6-12. **Purpose of section.** — This section was enacted for the limited purpose of aiding a mortgagee who discovers that the state has acquired an interest in the mortgaged property and is unable to pass a marketable title to the purchaser at a foreclosure sale unless the state can be joined in the foreclosure suit. *Maes v. Old Lincoln Cnty. Mem. Comm'n*, [1958-NMSC-115](#), [64 N.M. 475](#), [330 P.2d 556](#).

42-4-17. **[Remedy of person deprived of possession of improvements; time; value; lien.] Where action was not ejectment action,** purchaser of land at judicial sale was not entitled to relief under the betterment statute. *Chase Manhattan Bank v. Candelaria*, [2004-NMSC-017](#), [135 N.M. 527](#), [90 P.3d 985](#)

48-7-17. Due-on-sale clauses are generally enforceable. **Not restraint on alienation.** — Due-on-sale clauses in a commercial mortgage are not a restraint on alienation of property. *Brummund v. First Nat'l Bank*, [1983-NMSC-002](#), [99 N.M. 221](#), [656 P.2d 884](#); *Quintana v. First Interstate Bank*, [1987-NMCA-062](#), [105 N.M. 784](#), [737 P.2d 896](#).

XVIII. CITATIONS FOR FURTHER GUIDANCE

Resources by Loan Type:

- **HUD Mortgagee Letters:** Complete an internet search for HUD Mortgagee Letters for the most recent loss mitigation guidance. See also ML 2021-18; ML 2021-19 for COVID-19 loss mitigation guidance.
- **FNMA Lender Letters:** Complete an internet search for FNMA Lender Letters for the most recent loss mitigation guidance.
- **FHLMC Bulletins:** Complete an internet search for Freddie Mac Bulletins for the most recent loss mitigation guidance.
- **VA Circulars:** Complete an internet search for Freddie Mac Bulletins for the most recent loss mitigation guidance.

NMSA 1978, Sections related to foreclosure:

- §§ 39-5-1 to -23, Sales under execution and foreclosure.
- §§ 42-6-1 to -17, Quieting title.
- §§ 42-4-1 to -30, Ejectment and Recovery of Real Property.
- §§ 47-15-1 to -8, Mortgage Foreclosure Consultant Fraud Prevention Act.
- §§ 48-7-1 to -24, Mortgages.
- §§ 48-10-1 to -21, Deed of Trust Act.
- §§ 55-3-104 to -109; § 55-3-203; § 55-3-205; §§ 55-3-301 to -312, Negotiable Instruments.
- §§ 55-1-201 to -209, Uniform Commercial Code.

NMSA 1978, Consumer Protection Statute:

- §§ 57-12-1 to -26, Unfair Practices Act.

NMSA 1978, Sections pertaining to loan origination:

- §§ 58-21-1 to -32, Mortgage Loan Company Act.
- §§ 58-21A-1 to -14, Home Loan Protection Act.
- §§ 58-21B-1 to -24, New Mexico Mortgage Loan Originator Licensing
- §§ 58-22-1 to -33, Escrow Companies

Federal Statutes & Regulations:

- Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601 to 2617 (2012).
- Regulation X (specifically, Subpart C – Mortgage Servicing), 12 CFR §§ 1024.30 – 1024.41 (2017);
- Reg X is an implementing regulation of RESPA.
- 15 U.S.C. §§ 1639a – 1639h.