

## Homeowners Emergency Mortgage Assistance Program and Act 91 Notice Requirements Officially Reinstated

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On August 9, 2012, Governor Tom Corbett announced the re-start of the Pennsylvania Homeowner's Emergency Assistance Program ("HEMAP") administered by the Pennsylvania Housing Finance Agency ("PHFA"). HEMAP was discontinued in August of 2011 as a result of PHFA's determination that it lacked the necessary funding for the program. In June of 2012, Governor Corbett signed the Homeowner Assistance Settlement Act. This act, among other things, allocates to HEMAP the lion's share of Pennsylvania's portion of the cash settlement received in the litigation brought by states and the federal government against the nation's five largest mortgage servicers for alleged misconduct in connection with home foreclosures. According to the announcement, Pennsylvania's share of the funds has been received and PHFA will begin accepting applications for HEMAP immediately.

Another important part of HEMAP is the Notice of Intention to Foreclose, also known as the Act 91 Notice (the "Act 91 Notice"), which a mortgage lender is required to send to the borrower before initiating a foreclosure against the borrower's home. The Act 91 Notice provides notice to the borrower of the nature of their default and the time and method to cure such default. It also informs the borrower of HEMAP and how to apply for assistance under the program. The requirement to send the Act 91 Notice was suspended at the time HEMAP was discontinued. As part of the re-start of HEMAP, mortgage lenders will again be required to send the Act 91 Notice before instituting foreclosure in cases where the mortgage is secured by real estate that is the borrower's primary residence. In the August 18, 2012 issue of the Pennsylvania Bulletin, PHFA published its formal notice of the resumption of HEMAP. According to the published notice, October 2, 2012 is the official date for resumption of the Act 91 Notice Requirement. As a result, lenders will not be able to institute foreclosures against a borrower's home, unless it has sent the borrower an Act 91 Notice and has otherwise complied with the Act 91 Notice requirements. The form of Act 91 Notice that is required to be sent is the same form notice that was in effect when the notice requirement was suspended in 2011. A copy of PHFA's published notice, which includes a copy of the form Act 91 notice is attached to this Alert.

One obvious timing question raised by this is how to handle loans that become eligible for foreclosure prior to the October 2, 2012 effective date. If the foreclosure is not filed prior to the effective date, either because it could not be filed (e.g. due to the pendency of another notice period) or for some other reason, the foreclosure will not be able to be filed until the Act 91 Notice is sent and all applicable notice or stay periods have run. This could delay the process for at least thirty (30) days or more. A possible solution to this situation would be to begin sending the Act 91 Notices prior to the date such notices are actually required. Beginning to send the Act 91 Notices no less than 30 days prior to the effective date (i.e., by September 2,

2012) should alleviate the problem of any "notice gap." Also, since PHFA is apparently already accepting applications for HEMAP, lenders may decide to begin sending the Act 91 Notices as soon as possible after publication of the official notification by PHFA.

Sending the Act 91 Notice prior to the actual effective date, as outlined above, will serve two purposes. First, it will make it less likely that a particular foreclosure will fall through the cracks during the transition. Second, it will comply with PHFA's request that lenders give notice to homeowners who are currently in the foreclosure process of the possible availability of HEMAP assistance. Such voluntary notification on the part of mortgage lenders is being encouraged and recommended by some banking and lending organizations as a possible stop-gap to the fear that some courts may unilaterally impose blanket stays on foreclosure proceedings during the transition.

A final area to be discussed involves the inter-relationship between the Act 91 Notice and the notice required under Act 6. The Notice of Intention to Foreclose under Act 6 (the "Act 6 Notice") has been a part of the law since before Act 91. The resumption of requiring the Act 91 Notice does not eliminate Act 6. However, as was the case before the suspension of Act 91, the Act 6 Notice is not required where the Act 91 Notice is being sent. Act 91 expressly states that the Act 91 Notice is to be in lieu of any other notices. The Act 91 Notice also contains all of the information that is required to be included in the Act 6 Notice. For this reason, it seems clear that where the Act 91 Notice is sent no other notice is required, even where the notice is sent before the effective date of the Act 91 Notice requirement. Lenders who are concerned that discontinuing the Act 6 Notice prior to the effective date of the Act 91 Notice requirement could open their foreclosures to a technical challenge, may opt to send both notices during that time period. One other point to keep in mind - Act 6 is not going away. Where Act 91 does not apply, an Act 6 Notice could still be required where: a) the real estate being foreclosed upon meets the definition of "residential real estate" under the act; and b) the original mortgage amount is less than the "base figure" (currently \$230,110).

To read the complete notice [click here](#).

Please feel free to contact a member of the Barley Snyder Finance and Creditors Rights Group if you have any questions about this.

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