Introduction to the Mortgage Market and Foreclosure Flowchart

Lorray Brown (Michigan Poverty Law Program)
Sarah Mancini (NCLC)
Steve Sharpe (NCLC)

National Consumer Law Center
Fighting Together for Economic Justice

Overview/Agenda

- Understanding the Players in the Mortgage Market
    - Loan Origination Players
- Post-Origination Players
    - Secondary Market
    - Investors/Government Insurers
- Mortgage Servicers
- Foreclosure Flowchart

Mortgage Loan Origination

Lenders

- Depository Institutions
  - Local and National Banks and Credit Unions

- Non-Bank Lenders/Not Financial Institutions
  - Quicken Loans
  - Loan Depot
  - PennyMac
  - Hard Money Lender

Mortgage Loan Origination

Loan Officer

Mortgage Brokers

- Correspondent Lenders
- Table funded broker

Real Estate Agent

Appraiser

Mortgage Loan Origination

Closing Agent

Escrow Agent

Private Mortgage Insurance Companies

Government Mortgage Guarantors

Mortgage Loan Origination

- Mortgage Electronic Registration System (MERS)
  - Tracks sales of Note and Assignments of the Mortgage
  - Often appears in lien instrument as "Nominee for Lender"

Post Origination: Who Owns the Loan?

- **Loans "held in portfolio"**
  - Traditional way of holding loans
  - Whole loans
  - Easier to modify

- **Securitized loans**
  - Owned by bond holders via a trust
  - Tranches, Ownership divided
  - PSA may limit ability to modify

Post Origination: Who Owns the Loan?

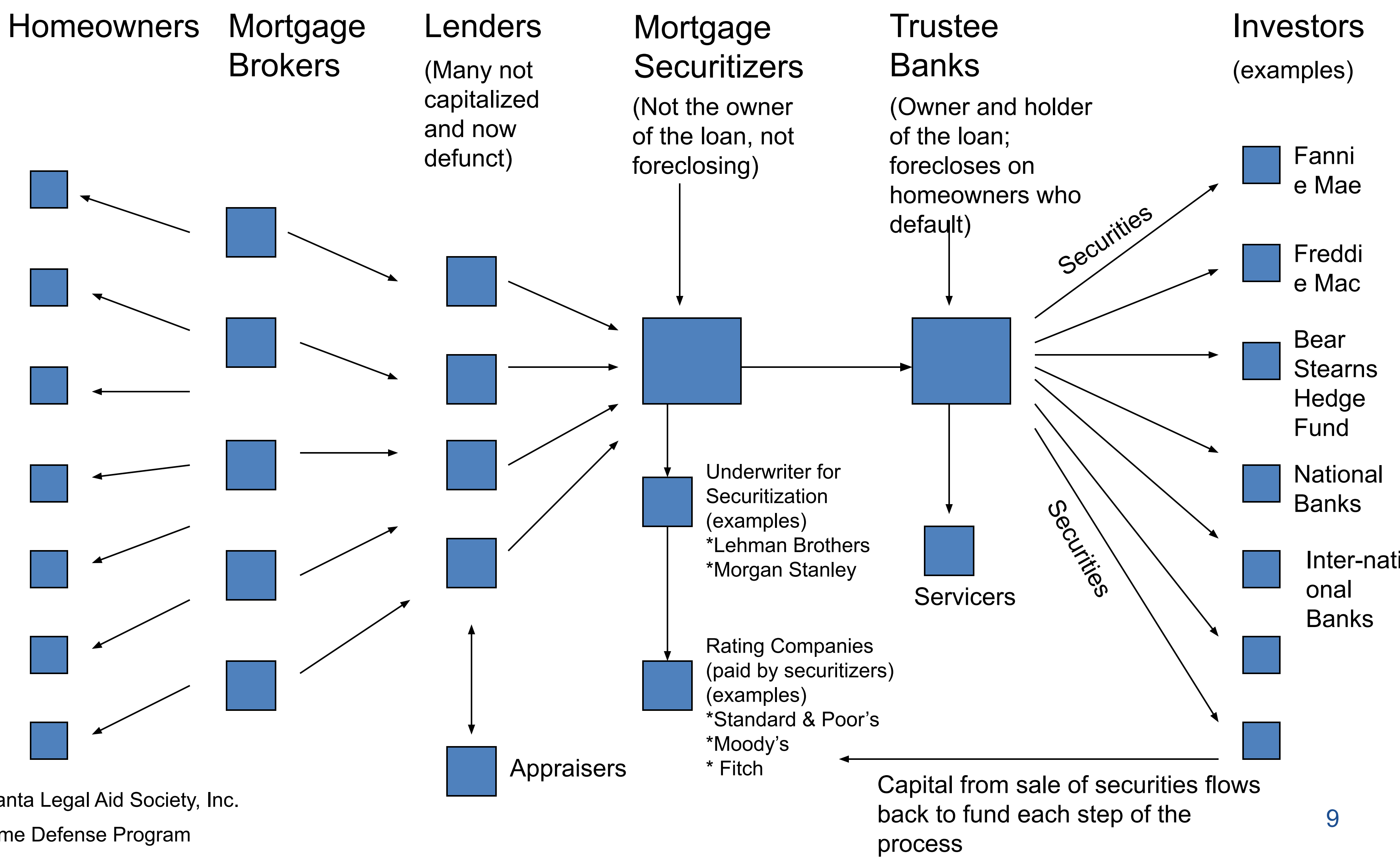
- Secondary Market

- Securitization of Loan - what is securitization?

  - Securitization is the procedure where an issuer designs a marketable financial instrument, such as mortgage debt, pooling large numbers of mortgage assets into one group (pool). The issuer then sells this pool of repackaged assets as securities to investors.

    This creates a “mortgage backed security.” Also referred to as an asset backed security.”

The Securitization Structure



Secondary Market

Sale of loans to secondary market investors

Agency Securities:

- Loans securitized by Fannie Mae, Freddie Mac and Ginnie Mae

Non Agency Securities Private Label Securities:

- Example : Wells Fargo Bank, N.A., Trustee, for Countrywide Loan Asset Backed Certificates, Series 2007-5

Pooling and Servicing Agreement

- Usually attached to a "prospectus," filed with SEC for public securitizations, available at www.sec.gov. See specific instructions in the materials.
- Prospectus identifies the players and is a good source of information on the underwriting standards and characteristics of the loans anticipated to be in the pool.
- PSA will usually specify who can institute foreclosure proceedings.
- PSA will set out guidelines and authority for modifying loans or approving other workout options.
- PSA will provide information on where the notes and mortgages should have travelled.

Pooling and Servicing Agreement and Prospectus

Example:

- Named foreclosing party is “Bank of New York as Trustee for CWABS Asset-Backed Certificates Trust 2006-15”

“Investor Restrictions”

Identifying the investor is critical:

- GSE?
- Federal agency like the FHA?
- None of the above? (typically a mortgage pool)

<u>Mortgage Pools</u>

Investors in mortgage pools have little say in which loans are modified and what guidelines will be used.

Servicers instead rely on PSAs

Government Sponsored Enterprises (GSE)

- Federal Housing Finance Agency (FHFA)
  - Fannie Mae (Federal National Mortgage Association/FNMA)
  - Freddie Mac (Federal Home Loan Mortgage Corporation/FHLMC)

Government Sponsored Enterprises (GSEs)

- Fannie Mae and Freddie Mac placed in government “conservatorship” in September 2008
- Federal Housing Finance Agency (FHFA) designated as federal agency to regulate the GSE’s
- Great influence over industry practices
- Mortgage servicing alignment
- Are GSEs governmental actors?
  - Due Process
  - Administrative Procedures Act

Does Fannie or Freddie Own the Loan?

- Fannie Mae owned (Fannie Servicing Guide)
  - https://knowyouroptions.com/loanlookup

- Freddie Mac owned (Freddie Servicing Guide)
  - https://ww3.freddiemac.com/loanlookup/

- Caveat: Note sales! (NPL and RPL pools)

Is it Government-Insured?

- Three Federal agencies *guarantee* loans:
- Federal Housing Administration (FHA), a department of HUD
- Veterans Administration
- Rural Housing Service, part of USDA
  - RHS/USDA also makes *direct* single family home loans

Who Are Servicers?

- Servicers are not the same as investors, holders, or lenders
- Servicers accept the payments and pass on to the trust
- Servicers’ compensation largely independent of loan pool performance
- Borrowers can’t hire or fire servicers

Mortgage Servicers

- The Mortgage Servicer
  - agent for the owner of a mortgage loan;
  - collects the monthly payments and interacts with the homeowner on behalf of the loan owner;
  - holds monies in escrow to pay the property taxes, homeowner's insurance, or other similar expenses;
  - is responsible for sending monthly statements, keeping track of account balances, etc;
  - negotiates any repayment or loss mitigation plan with a defaulting homeowner.

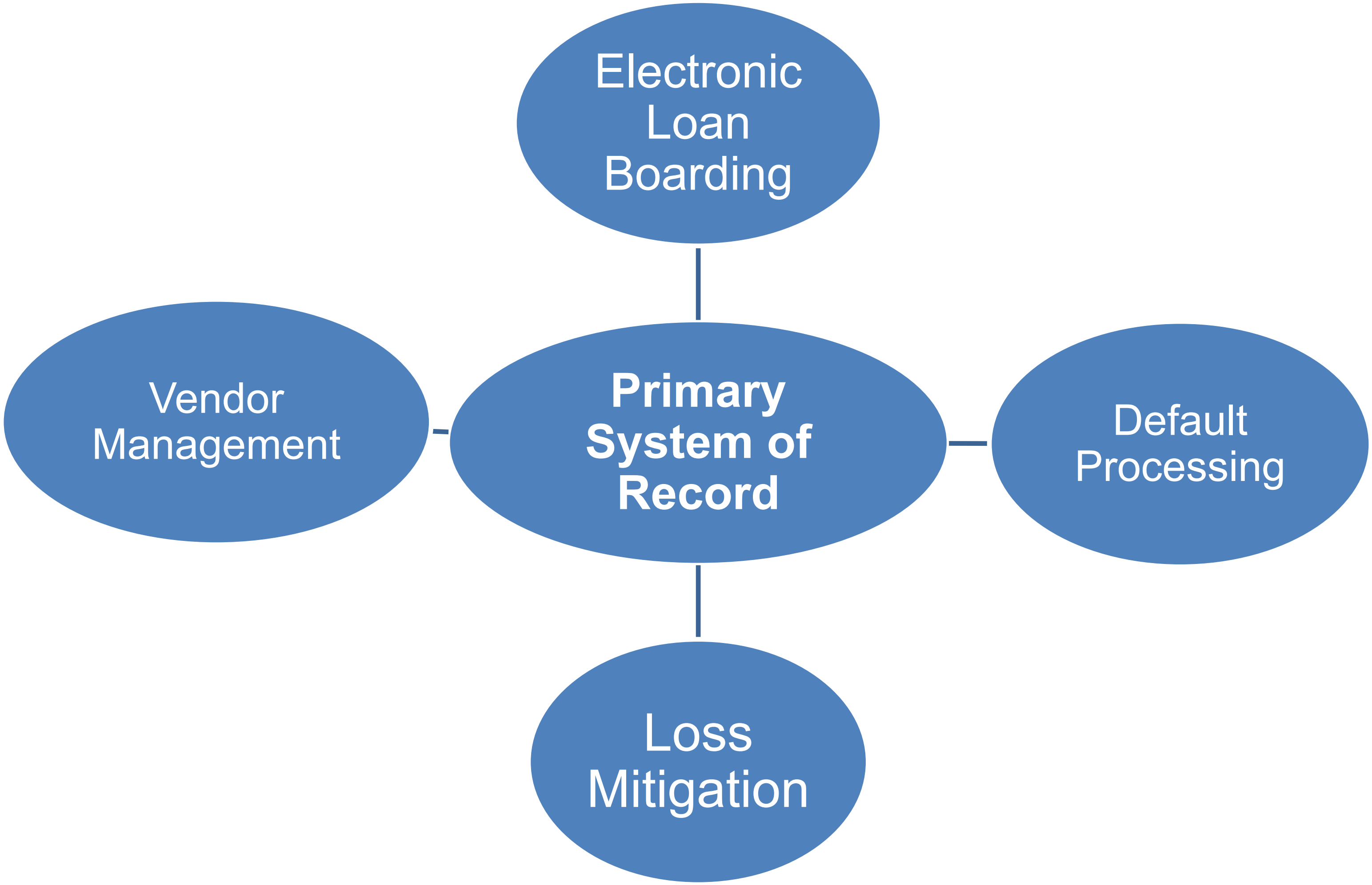
MERS

- Mortgage Electronic Registration Systems, Inc.
- Established early 1990s by GSEs, large lenders to save money on recording fees
- MERS sells two basic services:
  – Loan IDs (MIN Numbers) for members to use
  – Signing authority - At one point 20,000 individuals (employees of servicers & foreclosure mills) could sign documents as secretaries or vice presidents of MERS

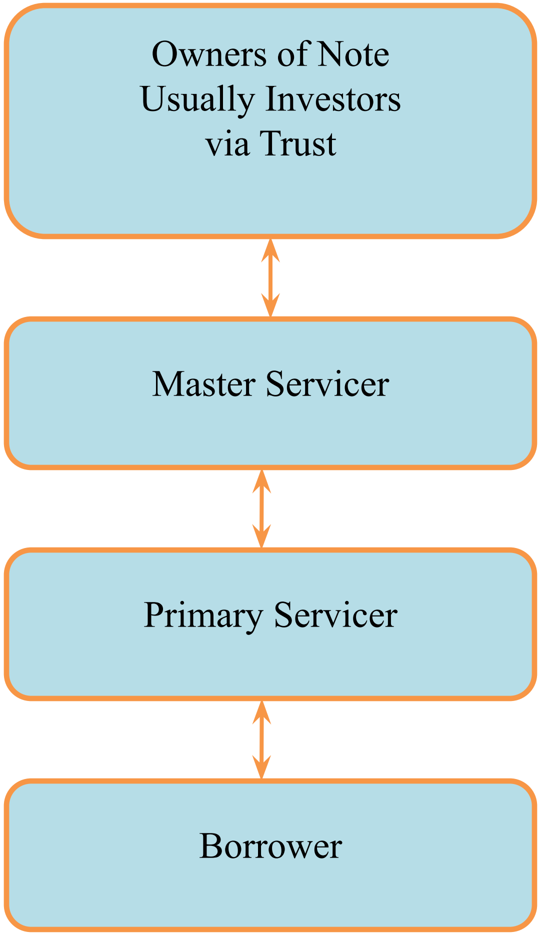
Identifying the Owner

- Servicer must, upon written request, provide borrower with contact information for the owner. TILA 15 U.S.C. § 1641(f)(2)
- New Note owner must inform borrower of change in ownership within 30 days. TILA 15 U.S.C. § 1641(g).
  - Statutory damages up to $4,000 per violation. 15 U.S.C. § 1640. 1 year SOL.
- “Request for Information” under RESPA. 24 C.F.R. § 1024.36, 12 U.S.C. § 2605(k)(1)(D)
  - Servicer must respond within 10 business days

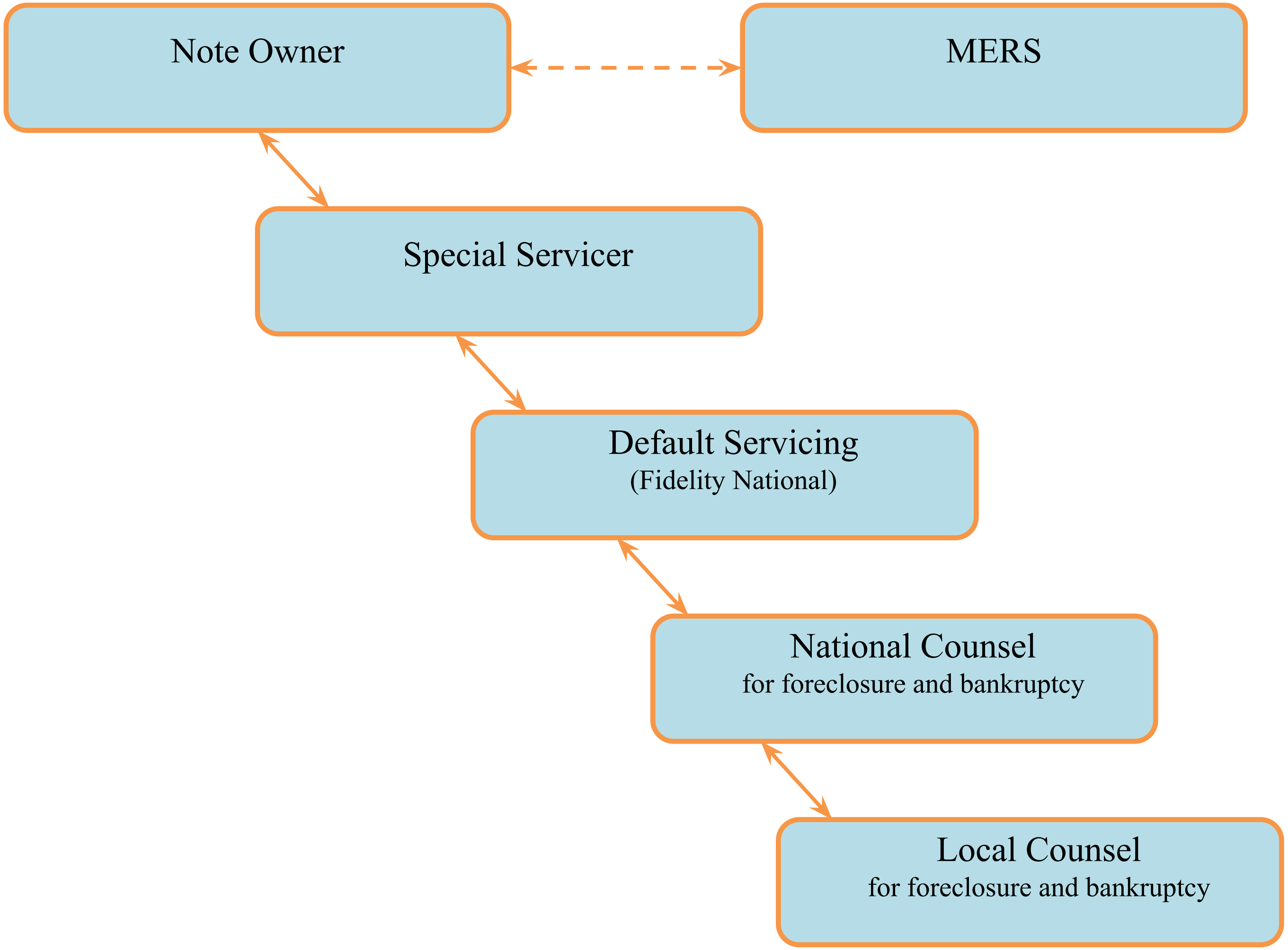
Servicing Software



Servicing of Performing Loans



Servicing in Foreclosure (or Bankruptcy)



The Problem: Foreclosures Are Costly

To homeowners

To communities

- Neighbors, probably $500 billion in 2009 alone
- Local governments, $20,000-$30,000 per foreclosure—tens of trillions of dollars

To investors

- Loss severities of 65%
- Average per home $145,000
- Billions of dollars

What Happens When There Is a Foreclosure?

- Servicers get paid/ reimbursed for expenses first
- Investors take what's left

- E.g.,
  - $400,000 loan
  - $100,000 current value
  - $50,000 in advances and expenses paid by servicer
  - Servicer gets $50,000, investors get $50,000
  - Investors have $350,000 loss
  - Servicer has no out-of-pocket loss

How Does a Servicer Make Money?

- Monthly servicing fee
- Default fees and costs
- Servicers want to increase the size of the pool and pile on fees
  - Capitalization mods
  - Up-front fees
  - Fee padding

The HAMP Era

- Servicers signed a “servicer participation agreement” with Treasury to participate in HAMP; program expired 12/31/16
- Uniform rules
- Servicers got an incentive payment for approved mods
- Servicers were required to offer a mod if the mod passed the “net present value” test (NPV test)

Different Approaches to Loan Mods

- Full application vs no app or lite doc app
- Affordability-based (targeting 31% DTI) or payment reduction (targeting 20% payment reduction)
- Application vs proactive offer by servicer at a specified point in time

Foreclosure Flowchart

Main Points – Foreclosure Flowchart

- Determine your client's goal with the house upfront

- To evaluate possible outcomes, you need to understand
  1) the ultimate decision maker for the loan;
  2) your client's financial situation;
  3) your legal leverage.

- We will focus on 1 and 2 here – the rest of the conference and NCLC manuals will address the 3.

Homeowner's Objectives

- Short-term vs. long-term goals
- Overall financial situation
- Family-school-employment issues
- Emotional attachment to the home

Finances and Feasibility

- It is important to dive into the homeowner’s financial situation early
  - Income, debts, assets
  - Temporary or permanent hardship
  - Previous modifications
- Underwater vs. equity in the property
  - Home value: tax assessor, zillow.com

Client's story

- Find out the client's attempts to work out the loan.
- Were they wronged/defrauded/harmed at any point in the loan process?
- Please do not ignore complaints regarding racial bias/inequity in the lending process.

Documents

Origination Documents:

- Note & Mortgage/DOT
- HUD-1 Settlement Statement
- TIL Disclosure
- Notice of Right to Cancel
- Loan Application

Gather Documents

Servicing/Loss Mit Documents:

- Recent mortgage statement (for each mortgage)
- Proof of client's income
- Loss mit applications client has submitted
- Past loan modification agreement, forbearance or repayment plan
- All letters from the mortgage servicer
- Foreclosure docs
- Payment history

Players and Rules

- It's critical to determine what investor rules apply.
  - Servicers apply different rules depending on the investor.
  - This frustrates clients who talk to other borrowers.
- Fannie/Freddie? FHA? VA? USDA?

Loan Modifications/Deferral

- Your client will often want to bring the loan current and stay in their home.
- A loan modification changes the basic terms of a loan and addresses the delinquency to bring the loan current.
- A deferral (or FHA partial claim) will just delay the payment of the past due balance to allow the borrower to resume the former payment.
- These can be combined.

Other Loss Mitigation Options

- Forbearance: Creditor accepts a lower payment or zero payment temporarily, then demands reinstatement at the end of the forbearance
- Repayment plan: Borrower pays extra each month to catch up
- Reinstatement
- Full sale
- Short sale
- Deed in lieu of foreclosure
- Bankruptcy?

Will bankruptcy help?

- The golden rule: Chapter 13 will help if you can afford to start making your regular mortgage payment, plus a little extra to the bankruptcy plan
  - Arrearage / 36 or 60 months = plan pmt
- Other options:
  - plan to sell or refi
  - plan for a loan mod

Assessing the Client

- It’s very beneficial to determine early in the case whether the client can stay in the home or has to move.
- If the client cannot save the home and has equity, it’s better to sell early than go through a bunch of unproductive loss mitigation applications.
  - This is a huge value add for the client.
- Chapter 13 is time sensitive.

Assessing the Client

- What you may see
  - A borrower with overwhelming tax debt or pay day loan debt or garnishment that is preventing their ability to stay in the home
  - A borrower who is clearly eligible for a loan modification but who has not been able to access one.
  - A person with no income, no litigation issues, and a lot of equity
  - A person with no income, no litigation issues, and no equity
  - A borrower who has title issues or issues resulting from death, divorce, absent co-borrowers

Questions?

Don’t Forget to Complete the Survey! You will be entered to win FREE 2022 Registration!

National Consumer Law Center
Fighting Together for Economic Justice

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. **www.nclc.org**