

## Right to Request a Mortgage Loan Modification: Process

- (1) Right to Request a Mortgage Loan Modification Notice:
  - (a) A creditor must send a Right to Request a Mortgage Loan Modification notice which conforms to the Right to Request a Mortgage Loan Modification – Sample Notice to a borrower who has a certain mortgage loan concurrently with the Right to Cure Notice.
  - (b) A creditor shall request a statement of the borrower's income and a complete list of debts and obligations concurrently with the Right to Request a Mortgage Loan Modification notice. A creditor may use the Required Documents for Loan Modification Application form or a similar form.
  - (c) A copy of the Right to Request a Mortgage Loan Modification notice shall be filed with the attorney general's office.
- (2) Borrower Eligibility. The right to request a mortgage loan modification shall be granted to a borrower once during any three (3) year period, regardless of mortgage holder.
- (3) Delivery. The creditor shall deliver the Right to Request a Mortgage Loan Modification notice to the mortgagor by:
  - (a) hand-delivery; or
  - (b) certified mail or similar service provided by a private carrier to the mortgagor at the address last known to the creditor or anyone holding thereunder.
- (4) Authorization to Send the Notice. A creditor may not send the Right to Request to a Mortgage Loan Modification notice unless it has been authorized to collect on the default.
- (5) Borrower's Response to Notice.
  - (a) A borrower shall notify the creditor of the borrower's intent to request a mortgage loan modification not more than 30 days following delivery of the notice to the borrower, and provide the creditor with:
    - (1) a completed Mortgage Modification Options form with one of the options selected;
    - (2) a completed Request for Modification Assistance Form or creditor's current loan modification application;
    - (3) documentation requested by creditor on Required Documents For Loan Modification Application or similar form;
    - (4) delivery of the Mortgage Modification Options form and other documentation to the creditor by hand-delivery; or certified mail or similar service provided by a private carrier.
  - (b) A borrower who holds a certain mortgage loan and fails to respond to the creditor within 30 days of delivery of the Right to Request a Mortgage Loan Modification notice shall be considered to have forfeited the 150 day right to cure period and shall be subject to a right to cure period of 90 days.

- (6) Creditor's Response to Borrower's Request for Modification. Not more than 30 days following receipt of a borrower's notification that the borrower intends to request a mortgage loan modification, a creditor shall provide the borrower with a written assessment of the borrower's ability to make an affordable monthly payment. This assessment shall include the following:
- (a) a written statement of the borrower's income, debts and obligations as determined by the creditor;
  - (b) the creditor's net present value analysis of a modified mortgage loan;
  - (c) the creditor's anticipated net recovery at foreclosure;
  - (d) a statement of the interests of the creditor, provided that a modified mortgage loan serves the interests of the creditor in all circumstances where the net present value of the modified mortgage loan equals or exceeds the anticipated net recovery at foreclosure and provides for an affordable monthly payment for the borrower; and
  - (e) a modified mortgage loan offer or a notice that no modified mortgage loan will be offered.
- (7) Modified Mortgage Loan Offer. If a creditor offers a modified mortgage loan, the creditor shall provide the borrower with the first and last names and contact phone numbers of not more than 2 creditor's representatives responsible for negotiating and approving the terms of and modifying the mortgage loan. A creditor shall be presumed to have provided the written assessment to the borrower if the creditor provides proof of delivery through the United States Postal Service or similar carrier.
- (8) Response to Modified Mortgage Loan Offer. A borrower who receives a modified mortgage loan offer from a creditor shall respond within 30 days of receipt of the assessment and offer of a modified mortgage loan.
- (a) The borrower may:
    - (1) accept the offer of a loan modification;
    - (2) make a reasonable counteroffer; or
    - (3) waive the borrower's rights and proceed to foreclosure.
  - (b) The borrower's response shall be in writing, and, if a counteroffer is proposed, shall include substantiating documentation in support of the counteroffer
  - (c) . A borrower who fails to respond to creditor within 30 days of a modified mortgage loan offer shall be deemed to have forfeited the 150 day right to cure period and shall be subject to a cure period of 90 days
  - (d) Where a counteroffer is proposed by a borrower, a creditor shall accept, reject or propose a counteroffer to the borrower within 30 days of receipt of the counteroffer.
- (9) A creditor shall report, on a semi-annual basis, to the Division of Banks the final outcome of each mortgage loan modification on all mortgage loans for which the creditor sent to a borrower a notice of the right to request a modified mortgage loan.
- (10) Enforcement of the Mandatory Right to Request a Mortgage Loan Modification Notice. The Right to Request a Mortgage Loan Modification –Sample Notice may be used until the Division of Banks has promulgated final regulations. Once the Division of Banks has published final regulations, use of the Right to Request a Mortgage Loan Modification notice as published in the regulation will become mandatory.