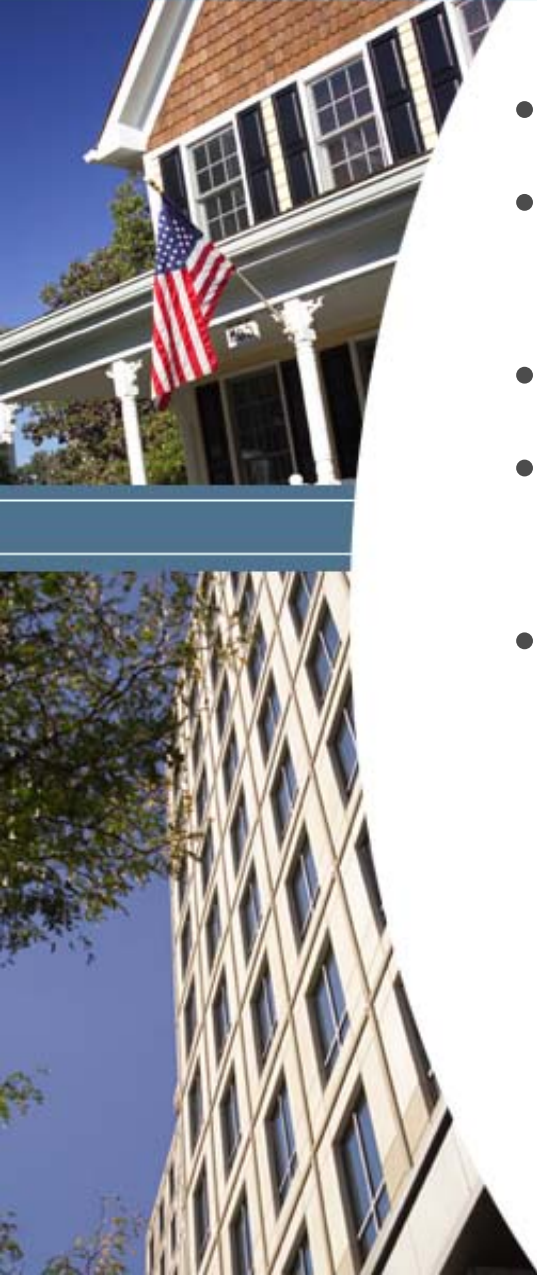


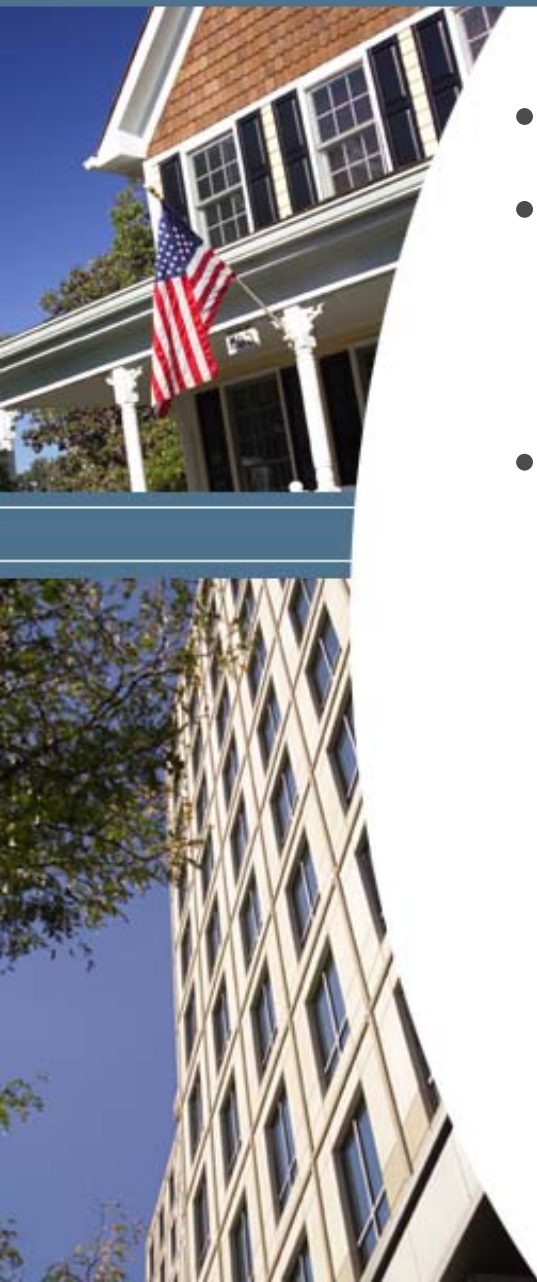


Top 10 Foreclosure/Bankruptcy Servicing Issues (Letterman Style)

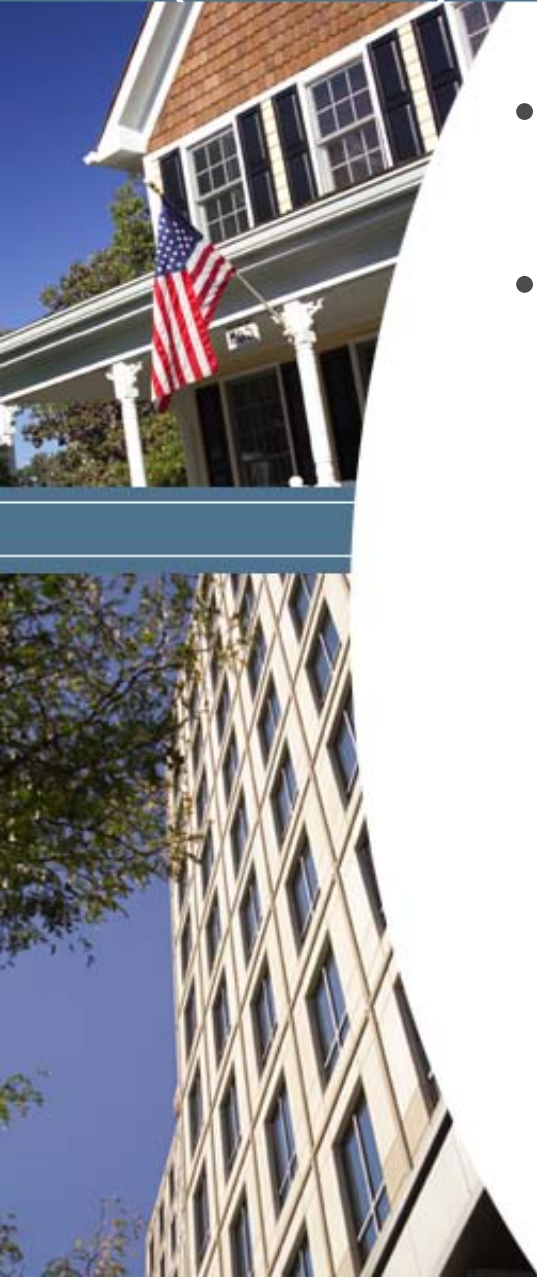
10. Consumer Based Actions Really Intended to Force a Loan Modification

- 
- TILA, FDCPA, RESPA, Unfair Business Practices
 - TILA Math- Rescission may be a better remedy than foreclosure
 - Removal from State Court to Federal Court
 - Withdrawal of Reference from Bankruptcy Court resulting in Removal to Federal Court
 - Foreclosure Rescue Scams
 - » Only deal with entities that do NOT require an upfront payment
 - » With a borrower “law firm”, don’t communicate with anyone other than an attorney

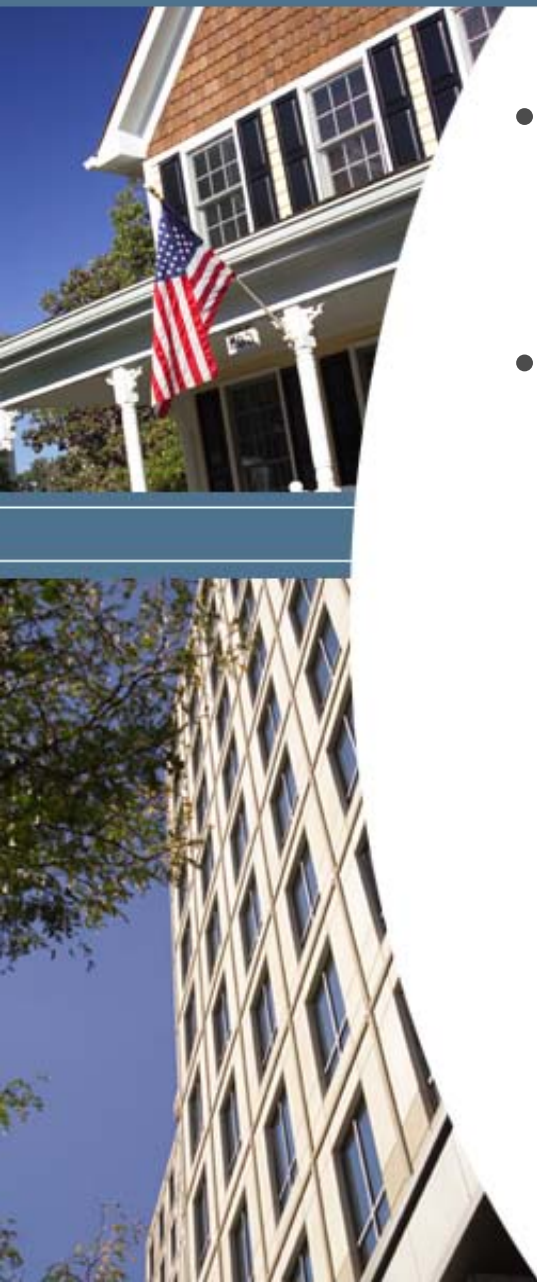
9. Chapter 13 Bankruptcy Strip-downs of Junior Liens

- 
- Demand an Adversary Action
 - Cannot Strip-down debt of nondebtor (Husband & Wife borrowers but only one files or bankruptcy debtor never assumed debt)
 - If Unsecured Debt Exceeds \$360,475 Debtor is ineligible for bankruptcy
 - » 1st \$500,000
 - » 2nd \$300,000
 - » Debtor Claims fair market value of \$400,000

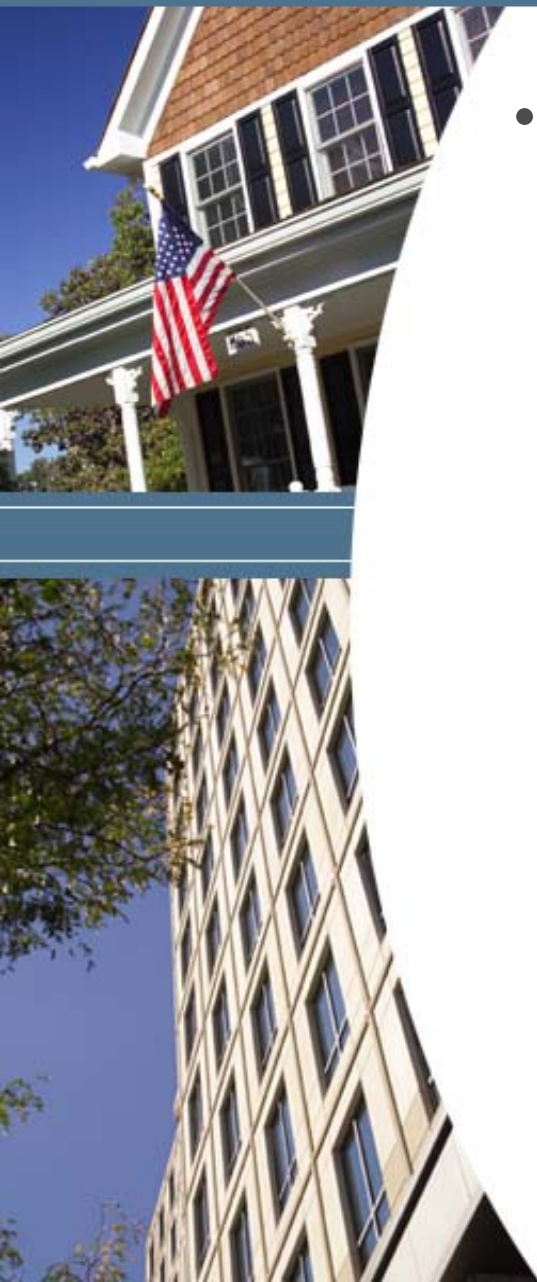
8. Protecting Tenants At Foreclosure Act (PTFA) (Attached)

- 
- Preempts State Law on Tenancy Interests After Foreclosure
 - Required the Ability to Manage Tenant Occupied Property

7. Vacant Property

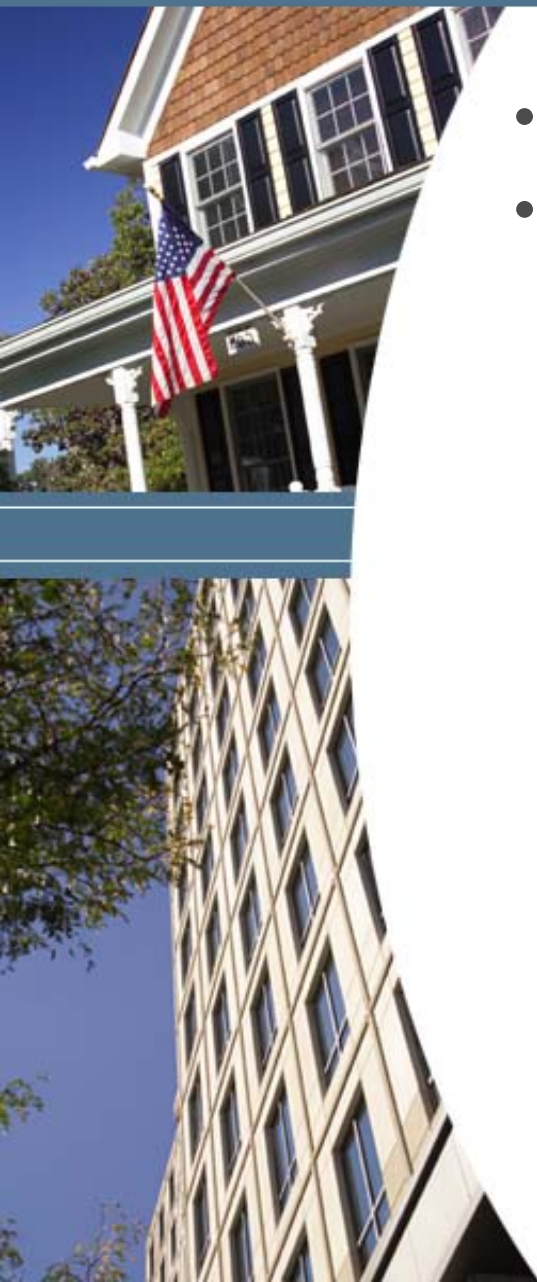
- 
- Pre-Foreclosure
 - » Code Violations
 - » Mortgagee in Possession Issues
 - Post Foreclosure
 - » Vacant Property Laws

7. Vacant Property (Continued)

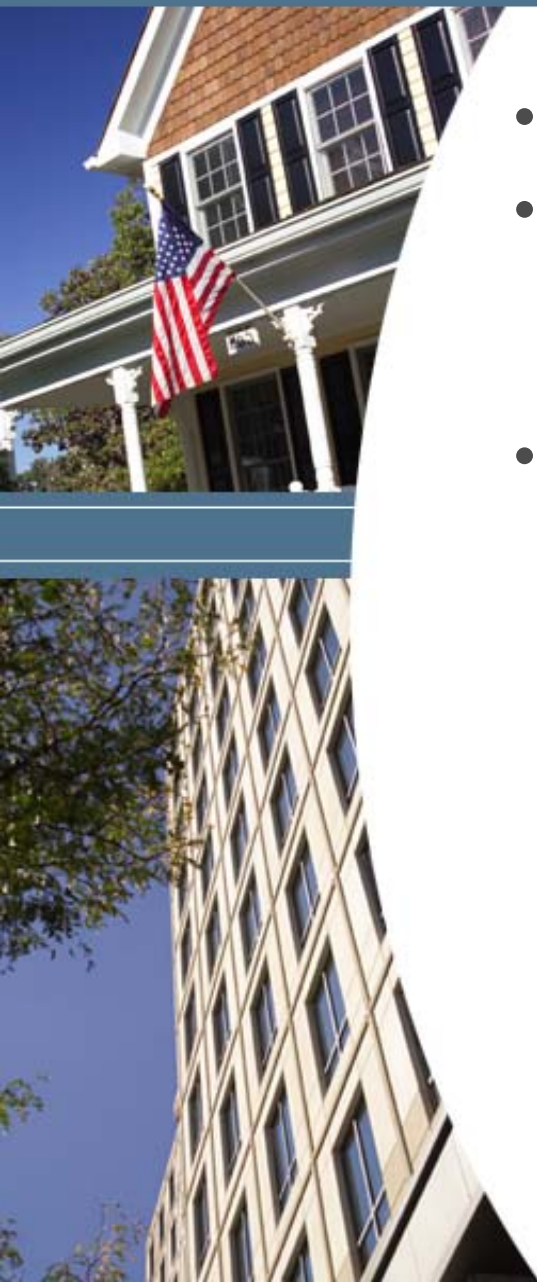


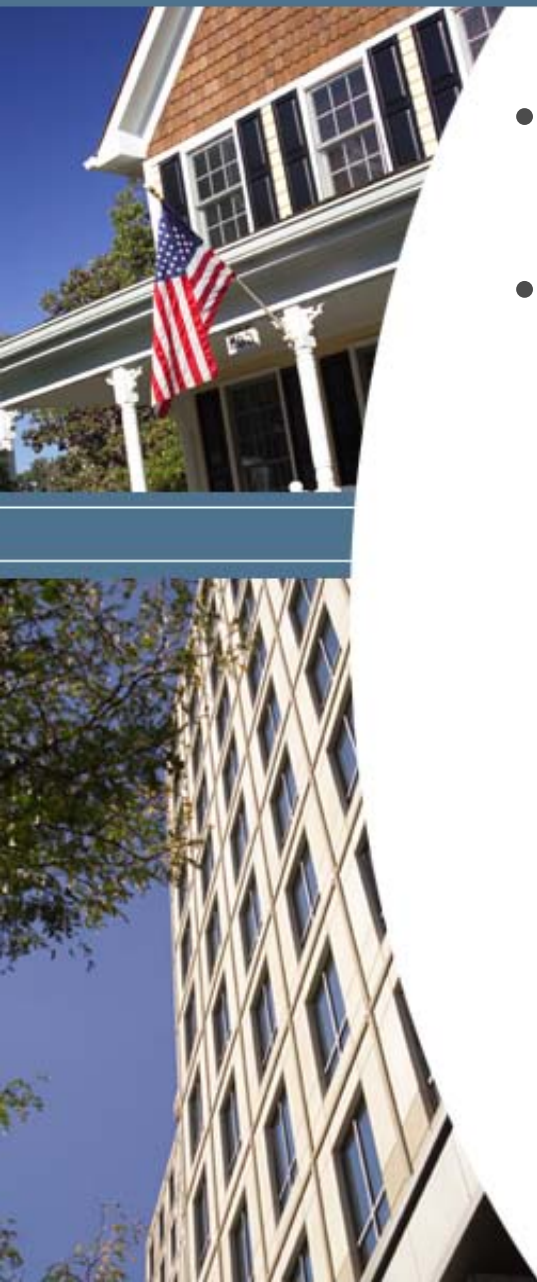
- Receivership As a Remedy to the PTFA and Vacant Property
 - » What Is A Receiver?
 - » Powers of a Receiver
 - Collect Rent
 - Improve Property
 - Sell Property
 - » Why Hasn't It Been Used in the Residential Context?

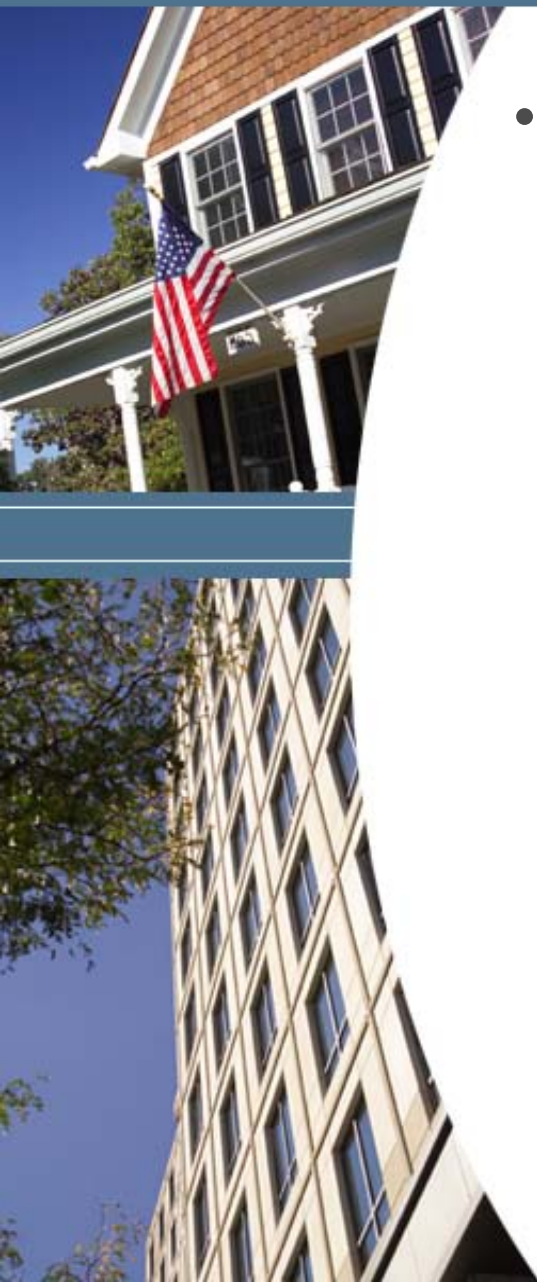
6. Coordination Between Loss Mitigation and Foreclosure

- 
- Has Always Been a Problem
 - New HAMP Requirement- June 1, 2010
 - » HAMP Borrower Outreach and Communication Guidelines (Supplemental Directive 10-02) (Attached)
 - Servicers must not make a foreclosure referral until a borrower has been evaluated for HAMP and determined ineligible (or reasonable solicitation efforts have failed).
 - » The California Experience- Civil Code Section 2923.5

5. Bankruptcy Loan Accounting

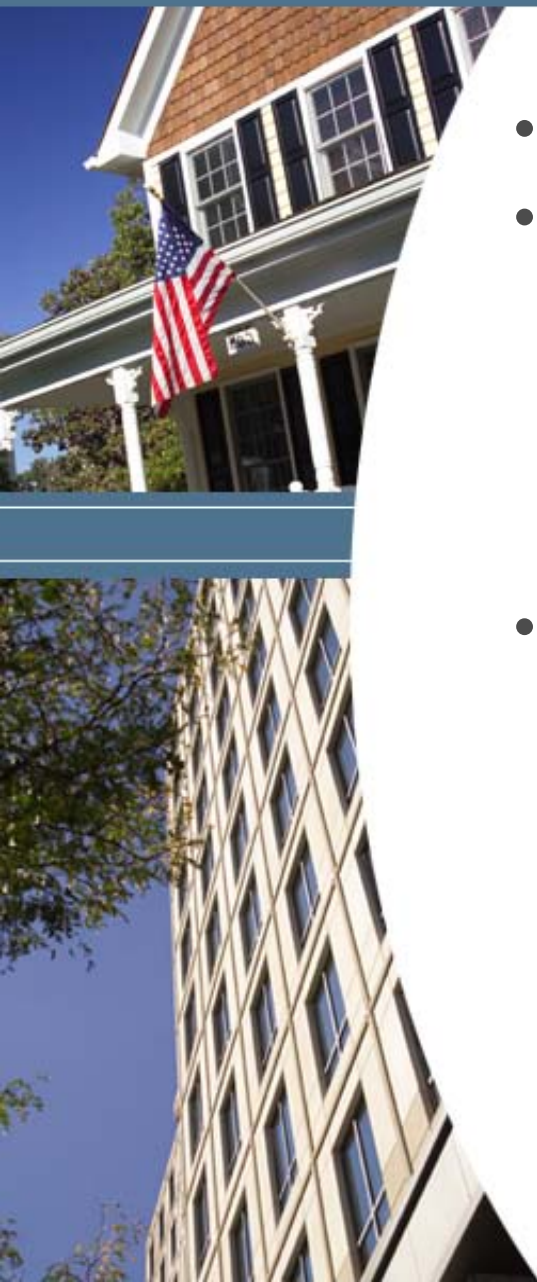
- 
- U.S. Trustee Investigation
 - Reviewing:
 - » Proof of Claim
 - » Motion For Relief From Stay
 - Push Back
 - » Privacy Issue- Gramm-Leach-Bliley Act (GLBA)
 - » Local Court Rules
 - » Rule 9011

- 
- Securities and Exchange Commission rules and regulations
 - State Action
 - » North Carolina- N.C. GEN. STAT. § 24-1.1E (2007) Requires lenders of certain loans to determine whether the borrower “has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums.” In making the determination lenders must consider the borrower’s: (1) credit history; (2) current and expected income; (3) current obligations; (4) employment status; and (5) “financial resources other than the obligor’s equity in the property that secures repayment of the loan.

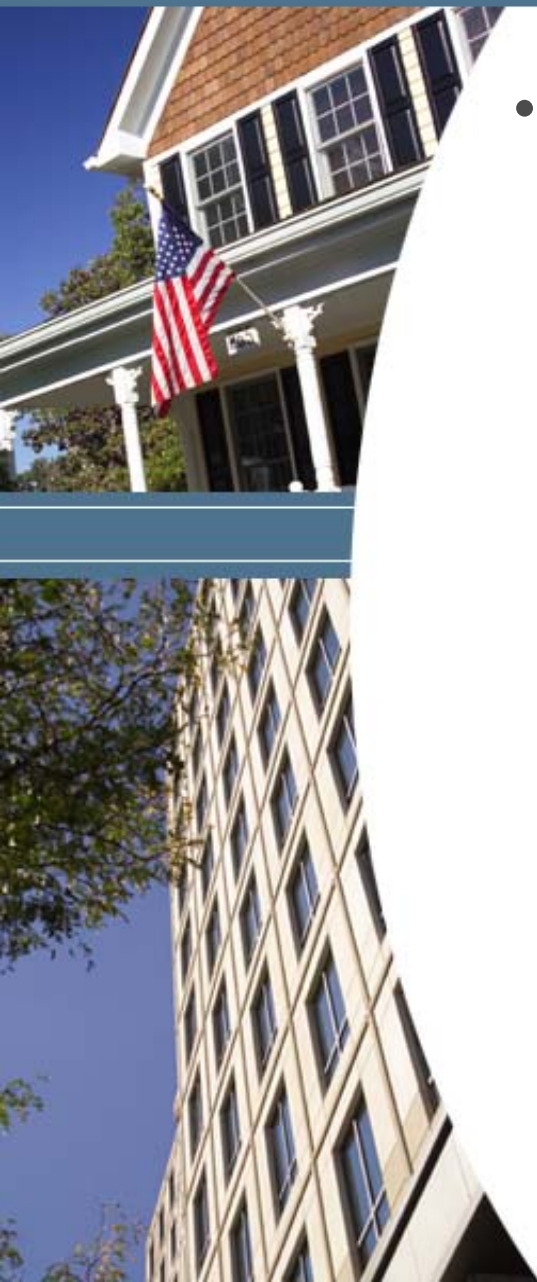


- State Action (continued)
 - » Minnesota- Act of Apr. 20, 2007, sec. 2, § 58.13(1)(a)(23), 2007 Minn. Sess. Laws Ch. 18
 - » Maine- See An Act to Prevent Maine Homeowners from Predatory Lending, sec. A-20, § 8-206-D(1)(G)(1)-(2), 2007 Me. Laws Ch. 273.
 - » Illinois- S. 1167, 95th Gen. Assem. (Ill. 2007). (West)

- Federal
 - » Mortgage Reform and Anti-Predatory Lending Act H.R.1728 2009- Passed in House
Directs the federal banking agencies to prescribe prohibitions against specified mortgage origination practices, including steering any consumer to a residential mortgage loan that: (1) the consumer lacks a reasonable ability to repay; (2) does not provide a consumer refinancing a residential mortgage loan with a net tangible benefit; or (3) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms).

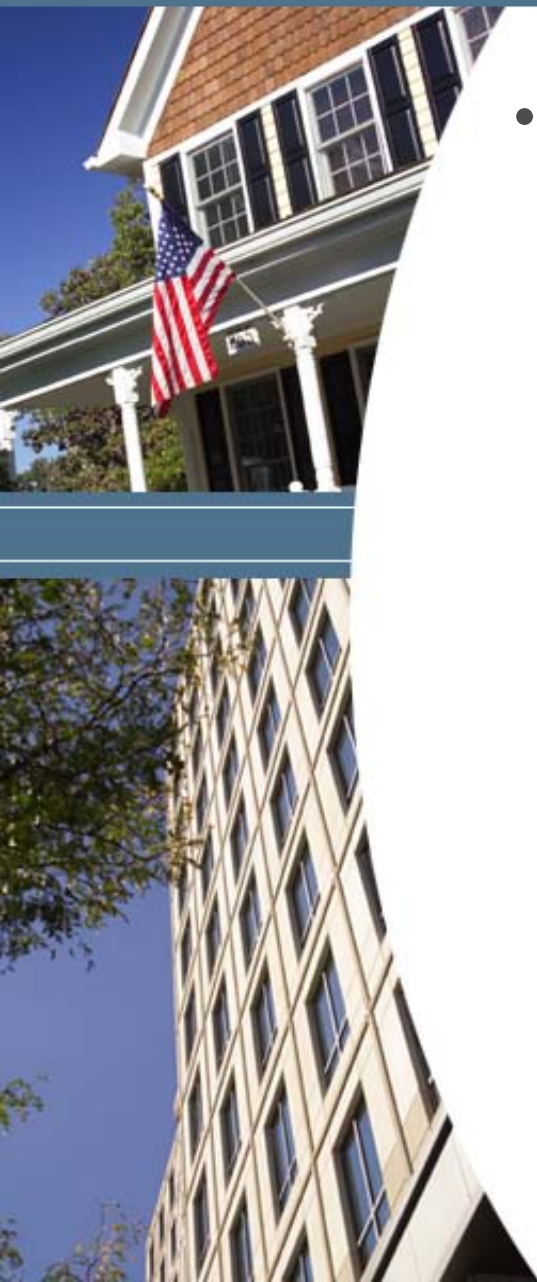


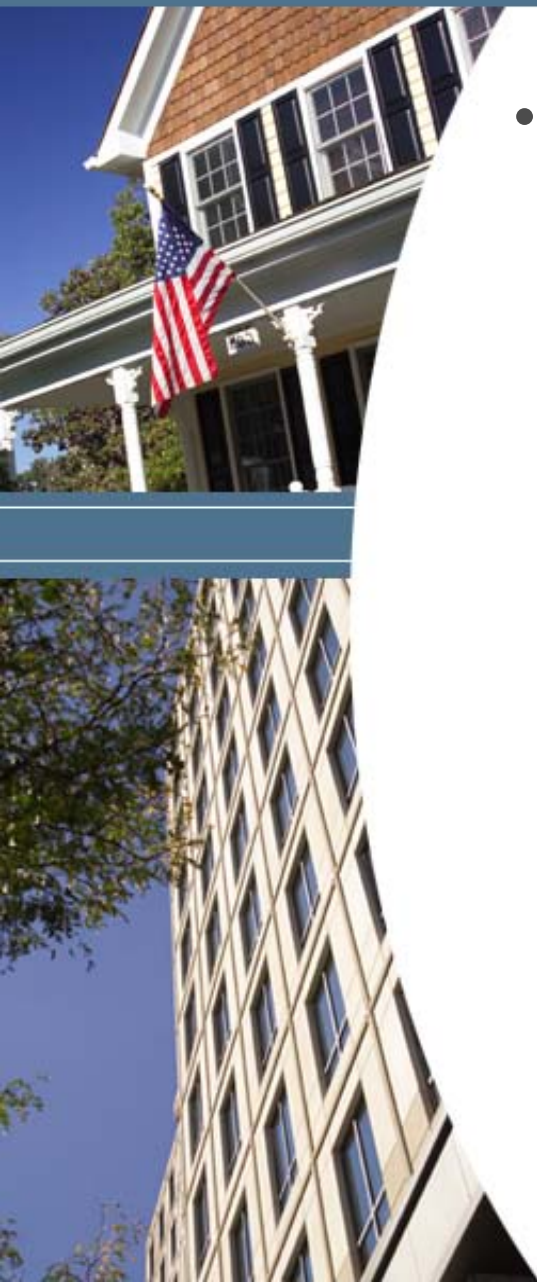
- Supplemental Directive 10-02- Effective June 1, 2010
- No Solicitation Required When a Bankruptcy is Filed
Servicers are NOT required to consider borrowers in active bankruptcy for HAMP BUT if a request is received from the borrower, borrower's counsel or bankruptcy trustee in a Chapter 7 or 13, they must be considered for HAMP
- Pre-Bankruptcy Trial Period Plan Followed by Bankruptcy
Borrowers who are in a trial period plan and subsequently file for bankruptcy may not be denied a HAMP modification on the basis of the bankruptcy filing.



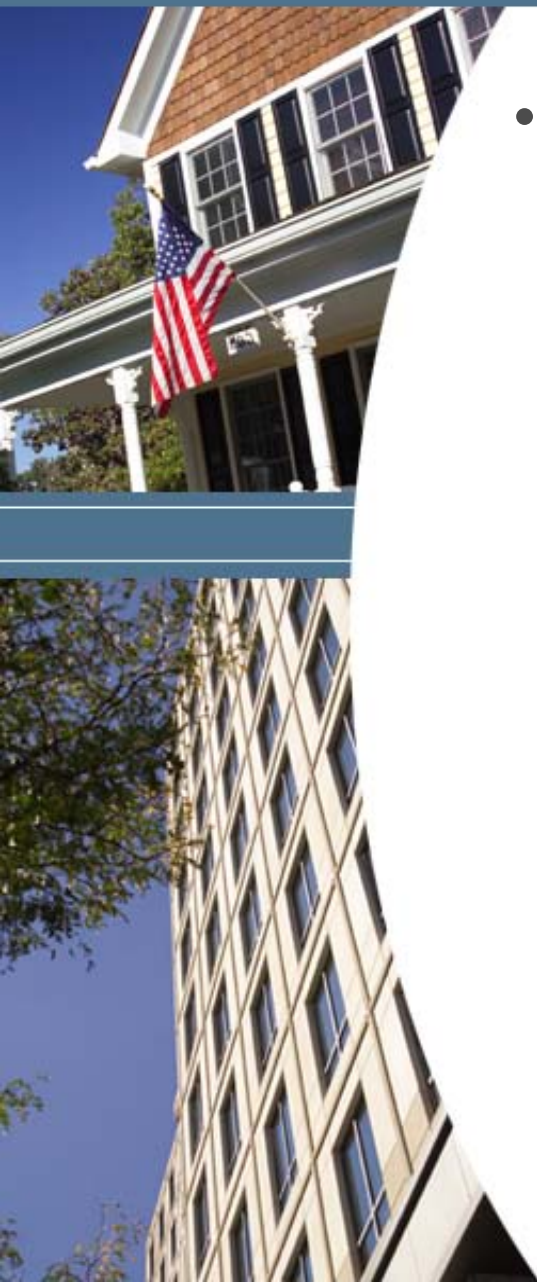
- All Chapters
 - » The servicer and its counsel must work with the borrower or borrower's counsel to obtain any court and/or trustee approvals required in accordance with local court rules and procedures.
 - » Servicers should extend the trial period plan as necessary to accommodate delays in obtaining court approvals or receiving a full remittance of the borrower's trial period payments when they are made to a trustee, but they are not required to extend the trial period beyond two months, resulting in a total five-month trial period.
 - In the event of a trial period extension, the borrower shall make a trial period payment for each month of the trial period, including any extension month.

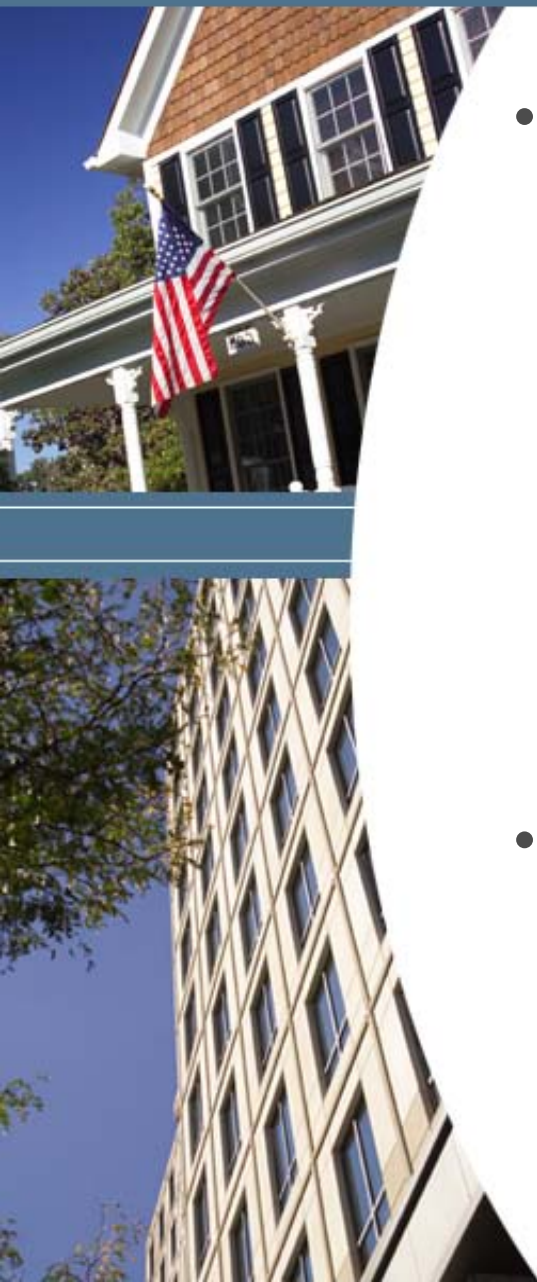
3. HAMP & Bankruptcy (Continued)

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- All Chapters (continued)
 - » Servicer may accept copies of the bankruptcy schedules and tax returns (if returns are required to be filed) in lieu of the RMA and Form 4506T-EZ, and may use this information to determine borrower eligibility (with the income documentation).
 - If the bankruptcy schedules are greater than 90 days old as of the date that such schedules are received by the servicer, the borrower must provide updated evidence of income to determine HAMP eligibility.
 - » Borrowers must provide a completed and executed Hardship Affidavit (or RMA).

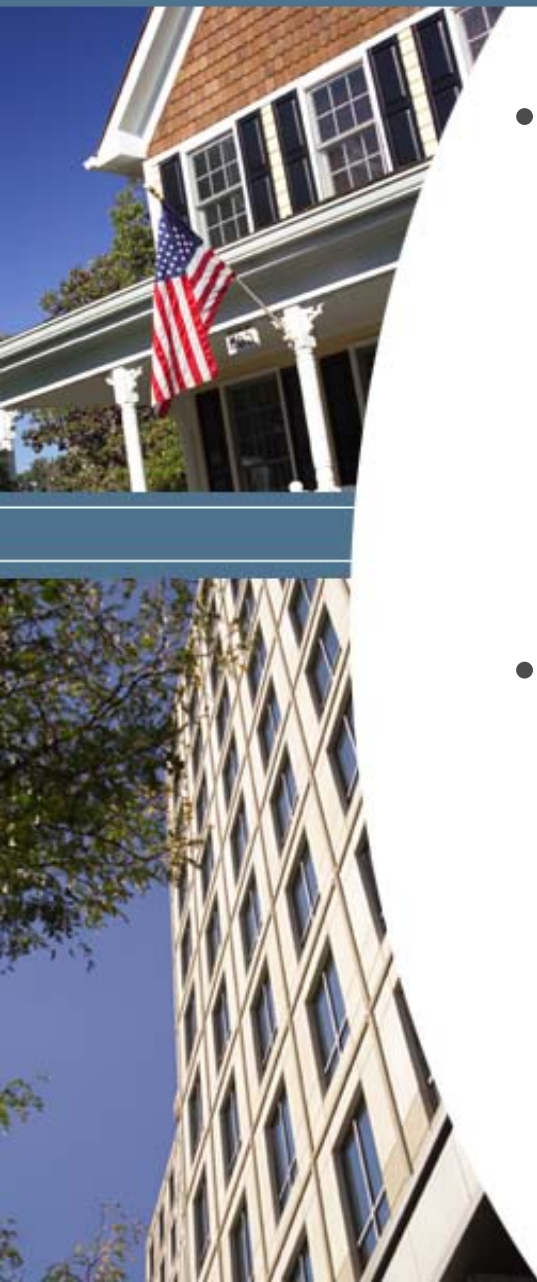


- Chapter 13
 - » Waiver of Trial Period Plan- converted to a permanent modification without completing a trial period plan if:
 - The borrower makes all post-petition payments on their first lien mortgage loan due prior to the effective date of the Home Affordable Modification Agreement, and at least three of those payments are equal to or greater than the proposed modified payment;
 - The modification is approved by the bankruptcy court, if required; and
 - The trial period plan waiver is permitted by the applicable investor guidelines.

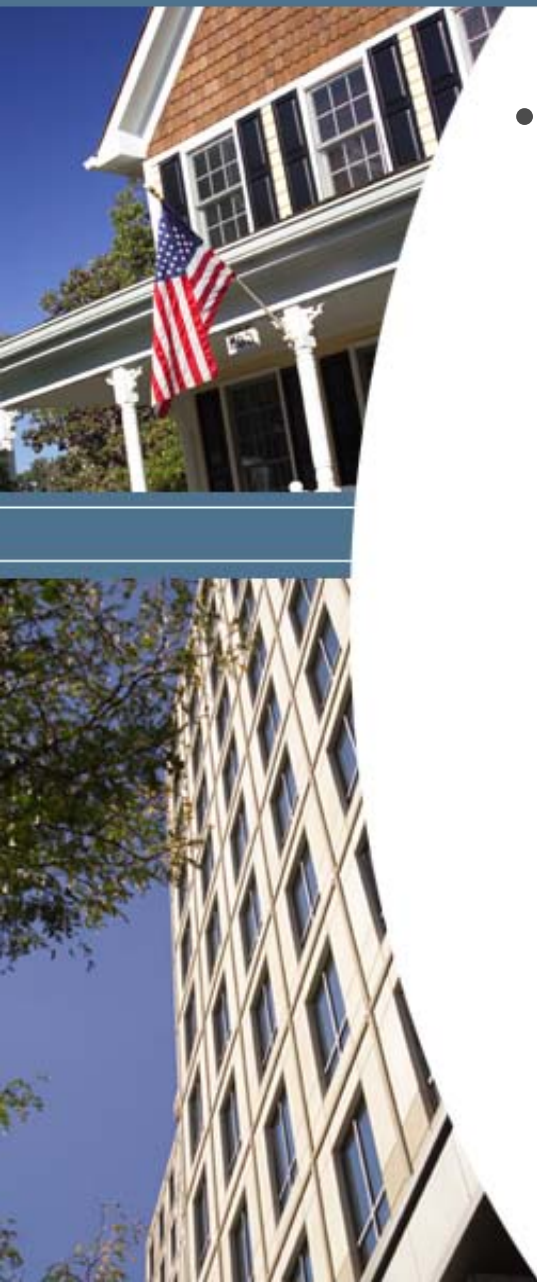
- 
- Chapter 13 (Continued)
 - » Must not object to confirmation of Chapter 13 plan, move for relief from the automatic bankruptcy stay, or move for dismissal on the basis that the borrower paid only the amounts due under the trial period plan, as opposed to the non-modified mortgage payments.
 - If in a trial period plan, and
 - Borrower has made post-petition payments on the first lien mortgage in the amount required by the trial period plan.



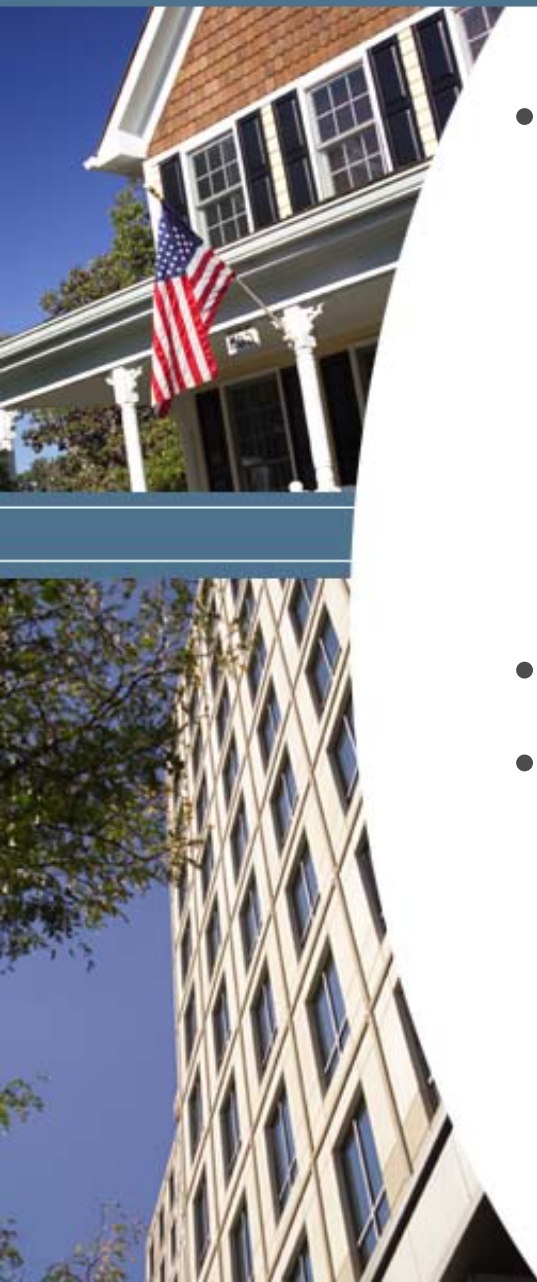
- Chapter 7
 - » Discharged Chapter 7 Debtors are eligible for HAMP
 - » Special Language
“I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”
- What Happens If You Don't Follow These Rules?



- Documents
 - » Deed of Trust
 - Recorded
 - Unrecorded
 - » Note
 - Endorsed to Specific Party
 - Endorsed in Blank
- Status of Party Bringing Action
 - » Owner
 - » Holder
 - » Servicing Agent
 - » MERS

- 
- States
 - » Current Mediation Programs
 - Ohio
 - Florida
 - Massachusetts
 - Pennsylvania
 - Connecticut
 - » Pending Legislation
 - California
 - Numerous Other States

1. Mediation (Continued)

- 
- Elements
 - » Opt In
 - » Opt Out
 - » Unlimited Delays
 - » Judicial Review
 - » Delay of Legal Enforcement Right
 - » Suspension of Civil Rules
 - Statistical Results
 - The Politics