

## 1.5 LOAN FORGIVENESS, WORKOUT & FORECLOSURE

**PURPOSE:** To define the considerations, policy and processes when a loan administered by the Affordable Housing Services (AHS) is in default or foreclosure.

### A. POLICY:

1. The majority of the County's housing loans include terms which make the loan due and payable if the owner (borrower) ceases to be the principal owner of the property, sells, refinances, rents or transfers title to the property. After confirming that a loan is in that status and is not a Hardship Case, AHS shall refer the case to the County Attorney's Office for their action.

2. In most cases, the County's loan is a second mortgage. In many loan default situations, even with the Hardship Case accommodations provided with this policy, a client's circumstances will not allow them to recover from their first mortgage. In those circumstances, as determined by AHS, the case shall be referred to the County Attorney's Office for their action.

3. Conditions for Short Sales: In a foreclosure action in which Hillsborough County is a second mortgage holder, a short sale is acceptable only when the first mortgage holder agrees to reimburse the County at the same percentage payoff as agreed by the primary lender. For example:

First Mortgage:	\$75,000	County Second Mortgage:	\$30,000
Short Sale Price:	\$50,000	First Mortgage %:	x 67%
% Difference:	67%	County Payoff	\$20,000

The County will accept no less than a 25% reimbursement as a result of an agreed upon Short Sale.

In no other cases will Hillsborough County accept a short sale in a foreclosure action. The case shall be referred to the County Attorney's Office for their action.

4. Under certain circumstances, the situation may be determined to be a Hardship Case resulting in the borrower being unable to repay a loan, make payments and/or otherwise defaulting on the terms and conditions of the County loan on the property and continue to own the property.

Those circumstances can include, but are not limited to the documented event of a:

- Loss of Full-Time Job or Substantial Loss of Income, through no fault of their own.
- Fire, Flood or other Natural Disaster
- Death of Spouse or Partner that Substantially Reduces Household Income
- Call to Duty – U.S. Armed Forces

- Loss of value where repayment of County Loan will result in a negative equity situation
- Substantial Decrease in Household Income
- Temporary or Permanent Disability that Reduces Income
- Recent Divorce that Reduces Income

Other exceptional circumstances may be considered for Hardship Case status upon the determination of the AHS Director.

All cases of Hardship request must be fully documented as to the situation.

5. In administering all loans, provisions in the recorded loan documents shall take precedence. Where the document does not address the circumstances of the loan default, provisions in this policy shall apply.

## **B. PROCEDURE:**

### **1. The borrower is provided up to three Notices of the Default by the County.**

If a monetary and/or non-monetary delinquency and/or default occurs, the County will notify the borrower as soon as possible, or as soon as it is discovered that the borrower is no longer the owner or residing in the home.

In all situations, the borrower will be sent an initial Notice to Cure in writing informing them of the delinquency and/or pending default. This formal notice serves as a reminder to the borrower that the County expects to be paid promptly and/or supplied the necessary documentation (e.g., insurance certificate, documented reason for delinquency, pending foreclosure). The notice also encourages the borrower to resolve the matter in a timely manner. A copy of this policy shall be included as part of the Notice to Cure.

The borrower will have fourteen (14) days from the date of the first notice to bring their account current, supply requested documentation, and/or apply for Hardship Case status.

If the County is unable to contact the borrower and/or if the borrower is unwilling to respond to the County's Notice to Cure, a second and third notice will be sent out. After the second notice is sent, the County will contact the borrower via telephone (or email if we have their email address) to determine the cause(s) for the delinquency/default and inform the borrower that they may have several options available that will prevent them from defaulting on their loan and facing possible foreclosure action. This call will be documented in the "Note to File" section of the client file.

The borrower will have nine (9) days from the date of the 2<sup>nd</sup> Notice to act.

A 3<sup>rd</sup> and final notice will be sent and the borrower given seven (7) days to act on the 3<sup>rd</sup> Notice to bring their account current, supply the requested documentation, and/or apply for Hardship Case status.

As appropriate, the case shall be referred to the County Attorney's Office for further action with documentation of the case as specified in A.1., A.2., or A.3; or, in cases in which the borrower has not responded as specified in B.1.

## **2. When Merited, Counseling is Provided and the Loan is Restructured**

In some situations, borrowers' circumstances provide a possibility of avoiding loan foreclosure if the County's loan is restructured.

The County requires that each borrower in these circumstances utilize a counseling/budgeting agency that assists prospective homebuyers and homeowners with homeownership, credit, and financial counseling and education. This type of organization will assist the borrower in determining their financial situation and/or causes for the delinquency and develop a program to get the borrower back on track, if possible. The borrower must provide proof of having attended, consulted with, or scheduled a session/meeting with a financial counseling/budgeting agency

Upon confirmation that the borrower has attended/enrolled in the counseling type program, and has a valid hardship preventing them from making their required loan payment, the County will review the file and execute an Alternate Mortgage Note with the borrower and structure a monthly payment that is affordable to them. The County loan payment, combined with any other housing expenses shall not exceed thirty-five percent (35%) of the household's total household income and their total debt-to-income shall not exceed forty-seven percent (47%). In some cases the payment will be very minimal, but those payments will be applied to borrower's principal balance.

If a borrower refuses to respond to the County's notices and/or fails to schedule a session with a financial counseling type organization, the borrower's loan will automatically be placed in default status. In addition, if the borrower cannot afford a monthly payment due to their housing expense and total debt-to-income ratios, their loan will convert to an interest bearing deferred payment loan at the current "Federal Funds Overnight Rate".

For those loans that have payments that are in a Deferred status, the County will re-evaluate the financial situation of the borrower in six (6) months from the date that the loan was put into Deferred status to determine if they are in a position to resume payments. If the borrower is still not able to resume payments after six (6) months due to a valid hardship, the County will re-evaluate the borrower once again at one year from the date that the loan was put in Deferred status. If after one year, the borrower is still unable to resume payments, and if a valid hardship still exists that is preventing the borrower from repaying the loan or resuming payments, the County, at its option, may grant a longer deferment (up to two years), or convert a payment type loan into a permanent zero percent (0%) interest/deferred payment type loan.

If at any time during which the loan is in a Deferred status the valid hardship that prevented the borrower from making the required loan payment is no longer present, the borrower will resume making the required loan payments immediately.

If a borrower has rented out the home that has the County loan, the County will seek immediate payment in full. If the borrower is unwilling to make payments, then the County shall pursue foreclosure and/or convert the loan to an interest bearing loan at the applicable Federal Funds Overnight Rate.

For loans that may be “Forgivable” decreasing balance type loans – all previous reductions in principal will remain in effect, but all future reductions may be terminated, if the borrower does not comply with the County’s requests.

### **3. Provision for Loan Assumption**

In the event of the borrower's death, the terms of the Mortgage and Note may be assigned or transferred only to an heir residing on the property who meets AHS loan eligibility requirements. Listed below are the possible restructure options:

- Payment type loans will remain as payment type loans, but if a very-low and low income household heir resides in the home that has a payment type loan, the loan may be renegotiated to a deferred payment type loan.
- If the heir is verified to be very-low or low income (income not exceeding 80% Area Median Income (AMI)) and the original loan was a deferred payment loan (DPL), the loan will remain a DPL.
- If the heir is determined to be moderate income (income above 80% AMI not exceeding 120%AMI) and the existing loan was a deferred payment type loan, the loan will remain a DPL.
- If the Loan was originally funded with HOME funds, and the heir household is above 80% AMI, the loan must be repaid. The HOME program requires that the loan funds be recaptured if the subsequent household’s income is over 80% AMI.

If at least one of the heirs does not reside in the property, the County will pursue recovery through the foreclosure process.

If the heir sells, rents, or transfers title to the property, they will be required to pay-off any outstanding balance at the time of sale. All property must be the principal residence of the heir.

If the property assisted with Hillsborough County funds is sold, rented, or if the title is transferred, the principal balance of the loan will be due and payable. If the property is transferred, by any other means, or if the owner-borrower vacates the premises for any reason, the loan will be due and payable and the County may pursue recovery through the foreclosure process.

The County will perform a cost-benefit analysis for all potential foreclosures to determine if sufficient proceeds can be obtained through the foreclosure and subsequent disposition of property.

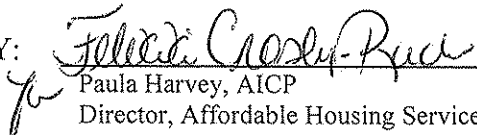
As a result of the cost-benefit analysis, if the amount of potential proceeds exceeds the County’s current investment by at least two times, we should pursue foreclosure. Potential proceeds are computed by taking the appraised or Property Appraiser’s “Comparable Sales

Value” less any outstanding liens. In cases where it is just the County’s loan on the property, typically the only costs that will be involved would be the legal/filing costs.

**It is important to note that through the foreclosure process, there are NO guarantees that the County will acquire the property. The County will look at each potential foreclosure on its own merit before deciding whether to pursue recovery.**

If the foreclosure process results in the property being owned by the County, AHS will surplus the property with the preference that the home/lot be sold to a very-low to moderate income household.

APPROVED BY:

  
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09/15/11  
Date