



**Testimony of Rachel Labush,
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before the Pennsylvania House Finance Committee**

In Support of HB 291: Prioritizing Mortgage Modifications

June 13, 2023

Chair Samuelson, Republican Chair Greiner, and members of the House Finance Committee, I appreciate the opportunity to testify today on House Bill 291, and how it will help low income families save their homes from foreclosure. This bill will make a modest technical change to the Pennsylvania Municipal Claims and Tax Liens Act (MCTLA) to subordinate certain municipal liens when necessary for a homeowner to obtain a modification of their mortgage and save their home from foreclosure.

I am a supervising attorney in the Homeownership and Consumer Rights Unit of Community Legal Services, where I represent clients in foreclosure and other mortgage-related cases, and supervise a team of attorneys and paralegals doing similar work. Community Legal Services (CLS) is a non-profit legal aid office representing low-income clients in Philadelphia. Each year, we represent hundreds of homeowners facing the loss of their home, including through mortgage foreclosure. Many of our clients fall behind in their mortgage due to job loss or disability, and later can resume making monthly mortgage payments again. In the majority of our foreclosure cases, we are able to help our clients retain the home through a modification of their mortgage. These modifications typically capitalize the mortgage arrear and re-amortize the loan debt, or put the arrear in a non-interest-bearing lump sum payment due at the loan's maturity.

Some mortgage servicers require that the modified mortgage be in first lien position in order to qualify. This is especially common with servicers of FHA loans, because HUD's servicing guidelines require that the mortgage maintain first lien position when modified. When someone falls behind in the mortgage, they often also fall behind in their utilities, such as gas or water, and utility companies impose liens for these arrears. Under MCTLA, these utility liens have priority over mortgages, even those recorded before the utility liens arose. Mortgage servicers of government-backed loans such as FHA mortgages will often require that these utility liens be paid off and satisfied before a loan modification is finalized.

As a result, a lender may offer a homeowner an affordable loan modification that would save their home only if they pay off the utility lien. And homeowners are unable to pay off these liens—typically between \$1,000 and \$3,000—in a lump sum. The homeowner therefore cannot

obtain a loan modification. Many homeowners we see with utility liens are eligible for or already enrolled in payment agreements, but those do not eliminate the lien until the entire debt is paid off.

This legislation would amend MCTLA to provide that a homeowner who experiences a temporary financial setback can qualify for a modification of their mortgage by subordinating municipal liens to the modification, provided that the mortgage is a purchase money mortgage insured or administered by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Department of Agriculture (USDA), or is backed by Fannie Mae or Freddie Mac.

Some recent examples of municipal liens preventing or delaying loan modifications in my own cases include:

- A homeowner was referred to CLS by his housing counselor one day before a scheduled sheriff sale in August 2022, after he was unable to finalize an FHA loan modification because of gas and code enforcement liens. He had already paid the gas bill of \$955 but the satisfaction had not been docketed yet due to delays with PGW. I immediately contacted the servicer to get the sheriff sale postponed and helped the client negotiate and clear the liens by working with my contacts in the legal departments at PGW and the City of Philadelphia Law Department. Once the liens were cleared, he reapplied and qualified for a new loan modification which was finalized in March 2023. Without intervention by CLS, I believe this home would have been lost at sheriff sale last summer.
- A homeowner fell behind in her FHA mortgage, gas and water bills because she lost income while caring for her chronically sick child during COVID. Once her income stabilized, she was offered a trial modification of her mortgage. Typically loan modifications require three months of trial payments before the permanent modification is offered. This client, who was already in payment agreements on her utilities, had to make almost two years of trial payments while the PGW and water liens were paid off. When the final modification was issued after we provided proof that the liens had been paid, the servicer would not accept it until the PGW lien was marked satisfied on the docket – which still had not been done over a year after the client paid it. I escalated the case at PGW, the satisfaction was docketed and at last the modification was finalized and foreclosure dismissed.
- A homeowner fell behind during the pandemic because of lost household income while she was caring for a disabled husband and minor children. The family is facing a sheriff sale scheduled less than a month from today. She should be eligible for an FHA Covid Recovery Modification, but the servicer will not offer one because of just over \$4,000 in water debt. We are helping her enter an agreement with the Philadelphia Water Department that should result in the release of the lien, but the pressure to beat the sheriff sale clock is extremely distressing to her and we may have to petition the court to postpone the sale again.

As these examples show, at times PGW and the Water Department have been willing to work with our clients after persistent advocacy, and we are able to get sheriff sales postponed while we help our clients clear the liens. However, we are concerned about the homeowners who do not find their way to CLS, or those outside of Philadelphia dealing with municipalities and utilities that categorically refuse to offer payment plans at all. For these vulnerable borrowers, there is no way to finalize their modifications and save their homes without paying off the entire municipal debt in a lump sum on short notice, which many low and moderate income homeowners cannot do.

We understand that there has been a concern raised that this legislation would also subordinate property tax liens to the modified mortgage. Property tax liens are also provided priority under MCTLA and would be technically covered by this legislation. However, this bill's effect on these property taxes will be negligible. Since the mortgage foreclosure crisis, lenders have generally required that property taxes be escrowed with the mortgage. Loan servicing guidance from the FHA, VA, USDA, Fannie Mae and Freddie Mac – which applies to the loans covered by this bill - also requires escrow of taxes for purchase money mortgages. Therefore, if a homeowner falls behind in their mortgage, the mortgage servicer continues to pay the property taxes for these delinquent mortgages and adds it to the outstanding mortgage balance. Accordingly, the property taxes remain current and there is no property tax lien associated with properties covered by these mortgages.

Thank you again for your thoughtful consideration of the technical amendments to MCTLA in HB 291. As we come out of the COVID pandemic, mortgage loan modifications will be increasingly important for homeowners to resolve delinquencies and get them back on track making payments. Without this legislation, many such homeowners will be denied modifications and face sheriff sales of their homes.