



National Foreclosure Mitigation  
Counseling Legal Assistance  
Program Procedural Manual

February 25, 2010

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An equal opportunity employer.

This information will be made available in alternative format upon request.

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# Introduction

## Mission Statement

Minnesota Housing finances and advances affordable housing opportunities for low and moderate income Minnesotans to enhance quality of life and foster strong communities.

## Background

The Minnesota Housing Finance Agency (Minnesota Housing) was created in 1971 by the Minnesota Legislature.

Minnesota Housing offers programs funded by the State Legislature and the Federal Government to assist homeowners facing foreclosure due to a temporary financial crisis by providing case management or financial assistance on a one-time basis. This will also help to preserve the integrity of neighborhoods by preventing properties from becoming vacant, abandoned, or blighted.

## National Foreclosure Mitigation Counseling Legal Assistance Program (hereinafter referred to as “the Program”)

The Legal Assistance component of the Program offers grants to support a rapid expansion of foreclosure legal assistance on a short-term basis. Funds will support the hiring of attorneys to assist NFMC foreclosure counseling recipients with legal issues directly related to their foreclosure, delinquency or short sale. The grants are made possible through a one-time appropriation by the US Congress to NeighborWorks® America (NeighborWorks®).

# Chapter 1 – Partner Responsibilities and Warranties

## 1.01 Procedural Manual

This Procedural Manual, including subsequent changes and additions, is a supplement to the Legal Assistance Funding Agreement (either being independently referred to herein as the “Agreement”) executed between the Legal Assistance Entity and Minnesota Housing. It is incorporated into such Agreement by reference and is a part thereof as fully as if set forth in the Agreement at length.

Minnesota Housing, as directed by NeighborWorks® reserves the right to:

- Alter or waive any of the requirements herein,
- Impose other and additional requirements, and
- Rescind or amend any or all materials effective as of the date of issue unless otherwise stated.

## 1.02 Evidence of Misconduct Referred to Attorney General

Minnesota Housing will refer any evidence of fraud, misrepresentation, or other misconduct in connection with the operation of the Program to the Minnesota Attorney General’s office for appropriate legal action.

If, after a grant is made, a Counseling Agency or Legal Assistance Entity that acted in good faith discovers any material misstatements or misuse of the grant proceeds by the recipient or others, the Agency shall promptly report such discovery to Minnesota Housing.

Minnesota Housing may exercise all remedies available to it, both legal and equitable, to recover funds from the Counseling Agency or Legal Assistance Entity. This includes NFMC Grant Funds, together with all applicable administrative costs and other fees or commissions received by the Counseling Agency or Legal Assistance Entity in connection with the grant and for all attorney fees, legal expenses, court costs or other expenses incurred by Minnesota Housing in connection with the grant or recovery thereof.

### **1.03 Unauthorized Compensation**

Counseling Agency or Legal Assistance Entity may receive fees approved in this Procedural Manual. However, Counseling Agency or Legal Assistance Entity shall not receive or demand from any other party to the transaction:

- Kickbacks,
- Commissions, or
- Other compensation.

### **1.04 Minnesota Housing Monitoring Guidelines and Requirements**

The Legal Assistance Entity is required to keep on file a complete copy of all documents for all households served with NFMC Grant Funds and documentation of all legal assistance provided and NFMC Grant Funds expended. A file may be requested to be made available to Minnesota Housing at the Legal Assistance Entity's office during regular business hours or a copy forwarded to Minnesota Housing for review.

Audited grants are reviewed for:

- NeighborWorks® requirements;
- Minnesota Housing program/policy compliance; and,
- Fraud or misrepresentation on the part of any party to the transaction.

### **1.05 Termination of Legal Assistance Entity Participation**

Minnesota Housing may terminate the participation of any Legal Assistance Entity under this Procedural Manual at any time and may preclude Legal Assistance Entity's future eligibility for reasons including, but not limited to, nonconformance with:

- The NFMC Program;
- This Procedural Manual;
- The Agreement; and,
- Applicable state and federal laws, rules and regulations.

Minnesota Housing may, at its option, impose remedies other than termination of the Agreement for Legal Assistance Entity noncompliance.

The Legal Assistance Entity may request reinstatement. The decision whether or not to reinstate a Legal Assistance Entity shall be at Minnesota Housing's sole discretion.

## 1.06 Representations and Warranties

The Legal Assistance Entity agrees to comply with all applicable federal, state, and local laws, ordinances, regulations and orders.

In addition to the above, Legal Assistance Entity warrants and represents the following:

- It has been informed and understands that the grant period for NFMC legal assistance funds ends June 30, 2010; and, that permanent foreclosure legal capacity cannot be supported with such funds;
- It will use the proceeds of the NFMC Grant Funds to assist homeowners with legal issues directly related to their foreclosure, delinquency or short sale. In addition, the use of NFMC Grant Funds shall at all times be used in accordance with the terms, provisions and conditions contained in the Agreement, the NFMC Program, this Procedural Manual, and all applicable amendments thereto;
- It agrees that it will not use NFMC Grant Funds to provide, obtain, or arrange on behalf of a homeowner, legal representation involving or for the purposes of civil litigation.
- It certifies that within 90 days of receiving NFMC Grant Funds, it is able to start receiving referrals and using funds.
- If a non-profit organization, then it is in good standing and authorized to do business in Minnesota;
- It has legal assistance offices and services that are accessible to people with disabilities;
- It has legal assistance professionals fluent in the language that customers speak or will use interpreter services to ensure non-English speaking customers can obtain foreclosure intervention legal assistance;
- It will not permit discrimination on the basis of gender, race, religion, color, familial status, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability;
- It certifies that it has the capacity to track and report both Client level and aggregate data. Reporting must be done via electronic data files;
- It has the capacity to furnish Client level data and aggregate reports on NFMC Program activity in electronic file format;
- It agrees to comply with quality control and evaluation of the NFMC Program through June 30, 2012;
- It certifies that the staff and volunteers who will provide foreclosure intervention legal assistance under the NFMC Program have no conflict(s) of interest due to other relationships with servicers, real

estate agencies, mortgage lenders and/or other entities that may stand to benefit from particular legal assistance outcomes;

- It agrees that legal assistance services will be provided at no charge to the Client.
- It certifies that it has at least one attorney trained in foreclosure-related law;
- It certifies that all attorneys participating in the NFMC Program are admitted to practice law by the Minnesota State Bar.
- It agrees to reimburse legal staff or contracting legal entities within 14 days of receiving an invoice;
- It agrees that a Client will be counseled by a NFMC Program counselor in accordance with terms of the NFMC Program prior to being referred to legal assistance services.
- It agrees to provide legal assistance services only to owner-occupants of single-family (one to four unit) properties with mortgages in default or danger of default;
- It agrees that reimbursement for any one Client will not exceed \$500.
- It has, or will secure at its own expense, all personnel and/or persons required for the performance of the Agreement;
- It has, or will obtain, sufficient funds to fully comply with the requirements contained in the Agreement;
- It will maintain the records and supply the reports required under the Agreement;
- It will obtain a signed authorization form permitting the Counseling Agency and Legal Assistance Entity to share Clients' files.
- It will advise any Clients receiving legal assistance that alternative funds must be used in the event civil litigation is warranted.
- It has legal authority to enter into, execute, and deliver the Agreement, and it has taken all actions necessary and incident to the Agreement's execution and delivery of such documents;
- It has made no material false statement, or misstatement of fact, in connection with its receipt of the NFMC Grant Funds, and all of the information previously submitted to Minnesota Housing, or to be submitted to the State of Minnesota in the future, relating to the NFMC Grant Funds or the disbursement of any of the proceeds thereof, is and will be true and correct;
- It is not in violation of any provisions of its charter, or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before or by any judicial body or governmental authority, against it or effecting its ability to enter into the Agreement and to comply with all of its provisions, and it is

not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into the Agreement or to comply with all its the provisions;

- It shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended.
- To the greatest extent practicable, all equipment and products purchased with NFMC Grant Funds shall be in compliance with the requirements of the Buy American Act (41 U.S.C. §10).
- If any NFMC Grant Funds are used to pay a consultant then the maximum amount allowable to pay the salary of any individual shall not be greater than the daily equivalent of the rate paid for level IV of the Executive Schedule of the United States Government, unless otherwise provided by law.
- It will not and has not used NFMC Grant Funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract or grant or other award covered by 31 U.S.C. §1352.
- Neither the execution and delivery of the Agreement, nor compliance with any of its terms, conditions, requirements, or provisions is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party, or by which it is bound;
- It will comply with all of the terms, conditions, provisions, covenants, requirements, and/or warranties contained in the Agreement, the NFMC Program, the NFMC Procedural Manual, and all applicable amendments thereto;
- It will comply with the Government-wide Debarment and Suspension regulations, 42 C.F.R. pt. 24;
- It will comply with the Government-wide Requirements for Drug-Free Workplace regulations, 24 C.F.R. pt. 24; and,
- It shall furnish such satisfactory evidence regarding the representations and warranties described in the Agreement as may be required and requested in writing by Minnesota Housing.

## Chapter 2 – Program Requirements

### 2.01 Program Screening and Referral

Access to legal assistance services requires Counseling Agency training on implementation of the Client screening tool and referral process developed by contracting Legal Assistance Entities.

### 2.02 Eligible Clients

Owner-occupants of single family (one-to-four unit) properties who have been counseled in accordance with the terms of the Program at Level 1, 2, 3 or 4 prior to being referred by a Counseling Agency.

### 2.03 Minimum Number of Clients to be Served

The minimum number of Clients to be served by each Legal Assistance Entity will be calculated by dividing their allocated Primary Legal Assistance funds by the maximum billable amount per Client (\$500).

### 2.04 Award Distribution

- Grantees may use up to 5 percent of their NFMC legal assistance funds for Program Oversight activities.
- Of the remaining funds, at least 85 percent must be spent on Primary Legal Assistance activities with homeowners or foreclosure counselors, and no more than 15 percent may be spent on Secondary Legal Assistance activities.
- Grantees may choose to spend 100 percent of their NFMC legal assistance funds on Primary Legal Assistance activities.

### 2.05 Fees

No fees, including service fees, membership fees or otherwise, may be charged to Clients in exchange for Program legal assistance.

A contracting legal entity may receive a maximum of \$500 of Program legal assistance funds for each Client referred by a partnering Counseling Agency. However, not every legal assistance session should be billed for \$500. Contracting Legal Assistance Entities must bill for the actual cost of providing the legal assistance service using the fee schedule in Exhibit #5 of this Procedural Manual.

## Chapter 3 – Eligible Program Activities

For the purposes of this Procedural Manual, there are three categories of eligible activities:

- Primary Legal Assistance;
- Secondary Legal Assistance; and,
- Program Oversight.

### 3.01 Primary Legal Assistance

Primary Legal Assistance refers to the direct assistance activities provided by the Legal Assistance Entity to a homeowner or foreclosure prevention counselor. Primary legal assistance funds can be used to serve Clients in non-judicial foreclosure proceedings, or in states and instances where foreclosure is a judicial proceeding but the foreclosure filing has not yet occurred. **NFMC Grant Funds cannot be used to pay for legal advice in connection with or for the purpose of civil litigation, including advice for a Client involved in a judicial foreclosure case.**

Eligible Primary Legal Assistance activities include, but are not limited to:

- Interpreting loan documents
- Reviewing case files
- Providing advice on foreclosure rights and options
- Negotiating with servicers
- Assisting with nullifying rescue scams
- Providing advice and counsel to hotlines of participating Counseling Agencies
- Working with a counselor to help a homeowner
- Preparing documents for homeowners for non-civil litigation purposes
- In judicial foreclosures, any assistance prior to a foreclosure filing
- Non-court related mediation procedures.

### 3.02 Secondary Legal Assistance

Secondary Legal Assistance includes the activities that Legal Assistance Entities undertake to support their Program efforts. Eligible secondary legal assistance activities include, but are not limited to:

- Creating boiler plate forms
- Training attorneys and legal staff on topics within the parameters of the Program. Funds can be used to develop the training curriculum or to deliver the training. Training must be provided by entities with experience in foreclosure law, and cannot include civil litigation-related topics. Training topics can include, but are not limited to:
  - The role and capacity of housing counselors;
  - Loan servicer documentation and requirements;
  - State and federal legislation updates;
  - The lender/servicer relationship;
  - Refinance and purchase funding programs;
  - General mortgage loan servicing requirements;
  - Loss mitigation options and qualification standards;
  - Best practices for counselor/realtor interactions with servicers;
  - Short sales, deed-in-lieu and other transactions; or,
  - Foreclosure fraud schemes and resources to prevent them.

### 3.03 Program Oversight

Program Oversight refers to the activities necessary to manage the legal assistance component of the Program on a day-to-day basis. Program Oversight activities include but are not limited to:

- Quality control activities;
- NFMC Grant Funds Management;
- Implementation of Organization Systems; and,
- Implementation of program infrastructure improvements to meet NFMC legal assistance requirements.

### 3.04 Ineligible Activities

Under no circumstance may NFMC legal assistance funds be used to support legal representation involving civil litigation, or for the purpose of civil litigation. Funds may **not** be used to:

- Represent homeowners in foreclosure proceedings;
- Assist homeowners who are representing themselves in court;

- File legal documents to initiate a civil complaint on behalf of homeowners;
- Assist homeowners in filing bankruptcy; or,
- Provide advice or counsel on judicial foreclosures if proceedings have begun or documents have been filed with a court.

## Chapter 4 – Reporting and Disbursement Schedules

### 4.01 Monthly Reporting Requirements

Legal Assistance Entities must provide Minnesota Housing with Monthly Client Level Data Reports which detail Client/household level data and aggregate overall Program and production data.

Exhibit #2 lists the data points which must be collected with the Monthly Client Level Data Reports.

Reports must be submitted within the first five (5) business days of the succeeding month (i.e. March 31, 2010 report received no later than April 7, 2010).

To receive credit for serving a Client, Client Data Points must be successfully downloaded into the data repository by June 30, 2010. Therefore, in order to allow adequate time for correction of errors, Legal Assistance Entities must provide Minnesota Housing with their final Client Level Data report no later than June 8, 2010.

### 4.02 Quarterly Reporting Requirements

Legal Assistance Entities must provide Minnesota Housing with Quarterly Narrative Reports and Quarterly Expenditure Reports.

Quarterly Narrative Reports must discuss overall progress towards goals established in the Agreement, Program activities, success and challenges encountered in helping Clients avoid foreclosure or mitigate losses, and efforts to ensure the affordability of mortgages when Clients retain their homes.

The Quarterly Narrative Report – Legal Assistance Program form provides the questions that must be answered in the Quarterly Narrative Report in the acceptable format.

The Quarterly Expenditure Report – Legal Assistance Program form provides the information which must be answered on the Quarterly Expenditure Report.

Quarterly Expenditure Reports must individually detail expenditures of Primary Legal Assistance, Secondary Legal Assistance and Program Oversight.

Legal Assistance Entities must provide Quarterly Expenditure Reports and Quarterly Narrative Reports to Minnesota Housing due on the following dates:

- **January 15, 2010.** Reporting period October 1 – December 31, 2009
- **March 15, 2010.** Reporting period January 1 – February 28, 2010.
- **July 15, 2010.** Final Report: Reporting entire grant period

#### 4.03 Draw Schedule

The disbursement schedule is designed to provide Grantee with sufficient up-front funds to strengthen their legal assistance capacity, while linking future disbursements to specific performance thresholds. Funds will be disbursed as follows:

<b>Disbursement Schedule</b>	<b>Disbursement as a Percentage of Legal Assistance Award</b>	<b>Disbursement as a Percentage of Program Oversight Award</b>	<b>Performance Threshold to Receive Disbursement</b>
<b>Disbursement #1</b>	35% of Total Legal Assistance Award	35% of Total Program Oversight Award	No performance thresholds required.
<b>Disbursement #2</b>	30% of Total Legal Assistance Award	30% of Total Program Oversight Award	Sub-grantee must have served 25% of the minimum number of Clients outlined in the Grant Agreement.
<b>Disbursement #3</b>	30% of Total Legal Assistance Award	30% of Total Program Oversight Award	Sub-grantee must have served 60% of the minimum number of Clients outlined in the Grant Agreement.

<b>Disbursement #4</b>	2.5% of Total Legal Assistance Award	2.5% of Total Program Oversight Award	Sub-grantee must have served 100% of the minimum number of Clients outlined in the Grant Agreement.
<b>Disbursement #5</b>	2.5% of Total Legal Assistance Award	2.5% of Total Program Oversight Award	Sub-grantee must have submitted and approved all final reports and met all other requirements.
<b>Total Counseling Award</b>	100%	100%	n/a

At minimum, Grantee must be up-to-date on quarterly reports in order to obtain funding disbursements.

Minnesota Housing reserves the right to adjust Legal Assistance Entity's draw schedule and amounts if funds are being expended more slowly than projected. In addition, if Legal Assistance Entity does not show substantial production in their quarterly reports, in Minnesota Housing's sole discretion, then Minnesota Housing also reserves the right to recapture or de-obligate funds.

#### 4.04 Client File Requirements

Upon closing a Client file, Legal Assistance Entities must:

- Complete and send the Client Summary Sheet to the referring Counseling Agency; and,
- Maintain the following items on-site in the Client's file:
  - Copy of referral from Counseling Agency;
  - Copy of Client Authorization Form;
  - Copy of Client Summary Sheet; and,
  - Sufficient documentation to track data points reported in NeighborWorks® data repository (including close out / resolution).

# Appendix

## Exhibits

- #1 – Legal Assistance Program Fee Schedule
- #2 – Client Level Data Points – Legal Assistance Program

## Program Forms

- #1 – Combined Privacy Act Notice and Tennessee Warning
- #2 – Quarterly Narrative Report – Legal Assistance Program
- #3 – Summary Sheet for Client Files – Legal Assistance Program
- #4 – Quarterly Expenditure Report – Legal Assistance Program
- #5 – Checklist for Individual Legal Assistance Client Files

## Definitions

All terms used in the Procedural Manual are industry standard definitions except for the following:

<b>Term</b>	<b>Definition</b>
Activity	A permitted or prohibited use of funds received under the Program.
Agreement	The Legal Assistance Funding Agreement executed between the Legal Assistance Entity and Minnesota Housing.
Counseling Agency	A nonprofit, incorporated organization or a governmental entity with which MHFA, in its sole discretion, enters into a contract agreement for local administration of the Program.
Client	Individual(s) seeking assistance through the Program.
CounselorMax	Software required for electronic reporting.
Grantee	Recipient of funds awarded under the Program.
Legal Assistance Entity	A legal nonprofit organization with which MHFA, in its sole discretion, enters into a contract agreement for delivery of the Program's legal assistance services.
NFMC Grant Funds	Counseling Agency's grant funds or a Legal Assistance Entity's grant funds.
Primary Legal Assistance	Direct assistance activities provided by the Legal Assistance Entity to a homeowner or foreclosure prevention counselor (Section 3.01).
Program Oversight	Funds to support quality control, day-to-day oversight and management of the NFMC Grant Funds and any required improvements to systems and Program infrastructure.
Secondary Legal Assistance	The activities Legal Assistance Entities undertake to support their Program efforts (Section 3.02).

As used in this Procedural Manual, unless otherwise specified herein, the preceding terms shall have the meanings set forth respectively after each term and such meanings shall be equally applicable to the singular and plural forms of such term.

# Exhibit #1



## National Foreclosure Mitigation Counseling Program

### Legal Services Fee Schedule

Exhibit 1

#### *Paralegal / Law Clerk*

Homeowner File Review and Initial Evaluation Conducted Under The Direct Supervision of an Attorney; tasks will likely include time spent conducting Minnesota Foreclosure Defense Task Force Legal Screen, copying or scanning loan documents, providing written summary to attorney and housing counseling agency related to potential legal claims, and tracking individual file services and outcomes.	\$30, flat fee
Hourly Rate	\$120

#### *Junior Attorney (1-5 years experience)*

Initial Homeowner File Review and Initial Evaluation	\$40, flat fee
Hourly Rate for Direct Legal Services, including review and analysis of homeowner files that have been identified for further legal analysis by the paralegal; mediation; reviewing proposed loan modification agreements; and advising housing counselors or individual homeowners.	\$210
Hourly Rate for Secondary Legal Services, including preparing boilerplate documents, education, and training.	

#### *Senior Attorney (6 or more years of experience)*

Initial Homeowner File Review and Initial Evaluation	\$40, flat fee
Hourly Rate for Direct Legal Services, including review and analysis of homeowner files that have been identified for further legal analysis by the paralegal; mediation; reviewing proposed loan modification agreements; and advising housing counselors or individual homeowners.	\$300
Hourly Rate for Secondary Legal Services, including preparing boilerplate documents, education, and training.	

## Exhibit #2

### Legal Assistance Program

#### Client Level Data Submitted Monthly

The following data points must be collected monthly for each Client for the Legal Assistance Program.

- Branch ID
- Client's Name (First, Last)
- Address (House Number, Street Name, City, State, Zip Code)
- Type of legal entity that assisted the Client
  - Private attorney or legal staff
  - For profit firm
  - Legal Services Corporation affiliate
  - Non-profit legal assistance entity that is not a Legal Services Corporation affiliate
- Services
  - Interpreting loan documents (Y/N)
  - Reviewing case files (Y/N)
  - Providing advice on foreclosure rights and options to counselor (Y/N)
  - Providing advice on foreclosure rights and options to Client (Y/N)
  - Contacting Servicers (e.g., letter, email, phone call)
  - Negotiating with Servicers
  - Assisting with nullifying foreclosure rescue scams
  - Preparing documents for homeowners
  - Participating in mediation/arbitration procedures
- Number of attorney or legal staff hours spent on Client's legal assistance case (Hours, not minutes. Decimals accepted.)

- Outcome
  - Initiated forbearance agreement/repayment plan
  - Executed a deed in lieu
  - Mortgage foreclosed
  - Received a second mortgage
  - Other
  - Counseled and referred to another social service or emergency assistance agency
  - Obtained partial claim loan from FHA lender
  - Bankruptcy
  - Counseled and referred for legal assistance
  - Withdrew from counseling
  - Currently in negotiation with Servicer, outcome unknown
  - Referred homeowner(s) to Servicer with action plan and no further counseling activity; outcome unknown
  - Foreclosure put on hold or in moratorium; final outcome unknown
  - Brought mortgage current with rescue funds
  - Brought mortgage current (without rescue funds)
  - Mortgage refinanced into FHA product
  - Mortgage refinanced into non FHA product
  - Mortgage modified with PITI less than or equal to 38% with at least a 5 year fixed rate
  - Mortgage modified with PITI greater than 38% or interest rate fixed for less than 5 years and appears to be sustainable
  - Mortgage modified with PITI greater than 38% or interest rate fixed for less than 5 years and appears not to be sustainable
  - Homeowner(s) sold property (not short sale)
  - Pre-foreclosure sale/short sale
  - Counseled on debt management or referred to debt management agency
  - Home lost due to tax sale or condemnation
  - Referred for assistance with civil litigation
- Outcome Date
- Outcome a result between the counselor and legal entity (Y/N)