

1. Objective Observations on Progressive Liberal Party's Mortgage Foreclosure Plan

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(1). The Plan

The PLP has announced that should it become the Government after the General Elections it shall introduce a ten point plan to help address a crisis with mortgage foreclosures.

The Plan is as follows:

1. Work with the banks and other institutional lenders to agree to a 120-day moratorium on foreclosures. This 120 day moratorium would allow for the appropriate consultation to take place within the financial sector and with the Central Bank and it would also allow the necessary legislative authority for the items below to be put in place.
2. Obtain the agreement of the banks to a write-off of 100% of the unpaid interest and fees for those mortgagors who are facing foreclosure. This should be acceptable to the banks as they would already have made provisions against these losses. Therefore, writing off the unpaid interest and fees would have no immediate financial impact on the banks. As for the delinquent borrowers, they would benefit from the fact that their outstanding balances would fall substantially. Essentially, they would be placed in the same position they were in before their loans became delinquent except that that Government would have a lien against the mortgaged property to the extent that the Government's guarantee to pay overdue interest on their behalf is called under point 5 below.
3. Actively encourage a reduction in the interest rate on the mortgages in question to Prime + 1%. This would be substantially below what most borrowers are paying, reflecting the impact of the government guarantee described below.
4. Actively encourage the banks and other institutional lenders to extend the loan repayment period under defaulting mortgages to the maximum allowed by the financial institution.
5. In return for the banks agreeing to the four elements above, the Government, for its part, would guarantee the interest payments of the affected borrowers for 5 years through 2017.
6. To assist borrowers who may not be able to meet interest payments and to help ensure the sustainability of the Government's guarantee, we will create a special fund into which borrowers would pay a reasonable annual service fee based on factors such as the payment history of the borrowers, practicable realities of the

borrowers and their outstanding loan balances. This fund would be used to help meet the obligations of those borrowers who cannot pay their interest through 2017. The collective contributions to the fund would assist the Government to cover the interest costs of those borrowers who fall into delinquency. This, in turn, would help reduce the direct cost to the Government if called upon to make good on its guarantee. The Fund would be there to cushion the cost to the Government and by extension reduce the ultimate burden on the taxpayer.

7. Pass any legislation necessary to ensure that homeowners who have accumulated savings in their pension funds can access those funds for the purpose of saving their homes from foreclosure.
8. Pass any legislation necessary to protect homeowners from foreclosure where they have already paid back more than a certain percentage of their mortgage loans. This will require close consultation with the banks and other interested parties. Once you have reached a certain level of home mortgage debt repayment, you should have some assurance that you will no longer be in danger of losing your home. This legislation would also vest powers in the Supreme Court, similar to laws in force in England, enabling a forced sale or foreclosure of homes to be stopped or suspended where the court decides that it is just and equitable in all the circumstances to do so.
9. Pass new legislation to give greater protection to borrowers in relation to interest, add-on charges and other bank fees; and to bring under regulation unregulated lenders. This new legislation will also bring under stricter control and supervision the system of salary deduction so appallingly abused by certain financial institutions.
10. Extend the “first homeowners” exemption from stamp duty to persons who lost their first home in foreclosure but are trying to buy a home once again.

(2). **The Context of the Plan**

In October, 2008, Prime Minister Ingraham announced that a mortgage relief plan would be introduced to shield the “most vulnerable in the society” from losing their homes.

Mr. Ingraham went further:

“For persons who would have lost their jobs, persons in the hotel sector who would for instance, be on short work weeks, and persons who for some other unforeseen circumstance are now unable to keep current in their mortgage payment, but who ordinarily sought to make their mortgage payments for their homes, we would like to ensure that the maximum number of persons who currently own their own homes in The Bahamas would continue to do so.”

He was very specific as to timing:

"[We will] put in place a relief program for homeowners... probably as early as the beginning of next month, November," (2008)

Unfortunately, these promises were not met. Thus the Guardian of April 3, 2012 reports as follows:

"Referring to an initiative that the Government announced in 2008 to help struggling homeowners, Ingraham acknowledged that the efforts had failed."

(3). Evidence of the Crisis and its Growth

This can be extracted from the following industry figures

	<u>December, 2008</u>	<u>January, 2012</u>
Industry Total		
Size of Residential Mortgages	\$2,800,000,000	\$3,100,000,000
Non performing (90 days in arrears)	\$166,000,000	\$455,000,00
Percent of Mortgages non performing	6%	15%
Number of Non Performing Loans (Based on average loan balances of \$170,000)	About 1,000	About 2,700

The record is that the number of non-performing loans grew from about 1,000 when Mr. Ingraham made his promise in 2008 to about 2,700 at the end of January, 2012.

(4). Response to the PM's 2008 Pledge

The record establishes that in 2008 there was strong public support for the concept of the Government's intervention along the lines promised by the Prime Minister.

The Nassau Guardian at the time quotes the Opposition Leader as follows:

"in harsh economic times, the Government should have the wherewithal to consider a move much like the one the Ingraham administration is undertaking.

Private Sector support was expressed by the President of The Bahamas Contractors Association as follows:

"It's the only solution for homeowners" and "it would facilitate the circulation of much needed cash throughout the Bahamian economy".

There is no record anywhere in the public print media of any banker raising any question as to whether it was "morally right" for the Government to intervene in the matter.

Thus the record is that the PM had the support of the Opposition and the private sector. Yet nothing happened.

(5). The Moral Question

Notwithstanding the fact that public records do not provide evidence of their having done so in 2008 when the Prime Minister announced an intention to intervene in this mortgage crisis, several commentators have now chosen to question whether it is morally correct for the Government to do any such thing.

Neither is there much of a public record from these commentators objecting to the myriad of times when the Government has similarly intervened in the economy – for example, the policy of reconnecting delinquent customers at BEC outside of normal corporate policy or prudential business norms.

This obvious lack of consistency gives rise to the question as to whether these commentators are allowing non relevant factors to influence their comments on the PLP's mortgage foreclosure Plan.

For the Progressive Liberal Party, a matter like this is precisely the kind of situation where the morally correct thing for the Government to do is to intervene and seek to help those in need. It is a philosophy which is central to the core values of the Party.

Thus the PLP has been consistent from 2008 on the need for action. At that time, Mr. Christie specifically said

"There is absolutely no [doubt] that there are people who are in desperate need of such assistance and it is in the wherewithal of the government and the financial sector to cause that to happen. I think that is a necessary intervention and I hope that the government would be able to make that as broad as possible"

To those Bahamian who think it important that public policy in the Bahamas be at least reasonably consistent with public policy in major democracies elsewhere , in 2008, Mr. Christie specifically pointed out

"looking at the economy of The Bahamas...., watching what the Americans and what other countries in Europe and the rest of the world are doing, (we cannot really) sit on our hands and do nothing."

In this regard it is also worth noting that the Prime Minister made his announcement in Washington at a meeting of Global leaders, presumably itself an indication that he saw evidence of wide international support for such a proposed intervention.

The reality is that many governments in many parts of the world acted on the basis that in addition to the economic rationale intervention in the mortgage foreclosure crisis was the morally correct thing to do.

(6). The Prime Minister's Response to the PLP Plan

The Nassau Guardian of April 3, 2012 quotes the Prime Minister as follows:

“The PLP's proposal Mortgage Relief Plan is unworkable and thoughtless. I think it is a pie in the sky and not workable – you can talk to professionals in the business”.

With respect to the comment about talking to professionals in the business, that is precisely what the PLP did in developing its plan. For example, it was as a result of such consultations that the Party decided not to copy ideas from a place like the Cayman Islands which provided in effect, for more direct financial contributions. It was also as a result of such consultation that there is the strong commitment as item 9 of The Plan “To Bring under regulations, the unregulated lenders” and to ‘bring under stricter control the supervision of salary deduction so appallingly abused by certain financial institutions”.

The assertion that the Plan is thoughtless can easily be disproved by reference to item 8 which provides for the PLP to “pass any legislation necessary to protect homeowners from foreclosure where, they have already paid back more than a certain percentage of their mortgage loans”. In fact this is already the law in England. Evidence of the thought behind this provision is reflected in the fact that a Supreme Court Judge from 1998 had commented on the usefulness of changing the Law of The Bahamas as the PLP is now proposing to do.

With respect to the PM's assertion that the PLP plan is a pie in the sky and not workable, it is worth considering that:

(a) This tends to be a common response to progressive ideas.. In fact the PLP had to face the same argument from the FNM when the PLP sought to introduce National Insurance; when it sought to introduce the Defense Force; when it sought Political Independence.

(b) So much of The PLP Plan simply requires political will. Examples are:

Item 7. Pass any legislation necessary to ensure that homeowners who have accumulated savings in their pension funds can access those funds for the purpose of saving their homes from foreclosure.

- Item 8. Pass any legislation necessary to protect homeowners from foreclosure where they have already paid back more than a certain percentage of their mortgage loans. This will require close consultation with the banks and other interested parties. Once you have reached a certain level of home mortgage debt repayment, you should have some assurance that you will no longer be in danger of losing your home. This legislation would also vest powers in the Supreme Court, similar to laws in force in England, enabling a forced sale or foreclosure of homes to be stopped or suspended where the court decides that it is just and equitable in all the circumstances to do so.
- Item 9. Pass new legislation to give greater protection to borrowers in relation to interest, add-on charges and other bank fees; and to bring under regulation unregulated lenders. This new legislation will also bring under stricter control and supervision the system of salary deduction so appallingly abused by certain financial institutions.
- Item 10. Extend the “first homeowners” exemption from stamp duty to persons who lost their first home in foreclosure but are trying to buy a home once again.

(7). The Prime Minister’s New Pledge

Notwithstanding the failure of the 2008 pledge, in response to the PLP Plan, the Prime Minister has given a new pledge to produce a plan.

In the Guardian of April 3, 2012, he asserts that:

“The FNM is not going to put in place a plan to deal with people who have not been paying and who could afford to pay”.

Firstly, the PLP Plan does no such thing.

More importantly, implicit in the view is that there are persons who are losing their homes because they refuse to pay even though they can pay.

There are at least two significant factors which are relevant to this view:

- (a) Such behavior has not been the historical norm. Thus if the Prime Minister has proof there there has been a material change in the behavior of borrowers, it would appear prudent for public policy to reflect an awareness of that change and not be limited to what may reasonably be interpreted as a broad condemnation by the nations Leader.

- (b) For at least three years, several bankers have reported that some borrowers had figured out that the depth of the mortgage foreclosure crisis was deep enough that sometimes a bank would reason it was not in the interest of the bank to take physical possession of a foreclosed home, even though the bank was legally entitled to do so. In light of the low probability of securing a resale, the bank in physical possession was exposing a foreclosed house to vandalism.

Consequently, some borrowers would appear to have adopted the practice of making choices as to which of their many debts they would pay, recognizing that with declining income they would not be able to pay all of those debts.

The PLP Mortgage foreclosure plan is sufficient as to be responsive to this reality because many of the affected borrowers would have gotten t their state by virtue of :

- (1i with credit from unregulated lenders
- (2) Undisciplined borrowing aided by abuses in the system of salary assignment .

The Response of the DNA to the PLP Plan

In a press release dated April 2, 2012, the DNA essentially repeats the views of the Prime Minister, providing credence to the view that the FNM and the DNA are reading from the same play book just like they are on objecting to Urban Renewal and the PLP's plan to double the investment in education.

However, the DNA's release goes on to outline its Plan for the mortgage relief:

- (a) The Central Bank should encourage "the Central Bank of The Bahamas to reduce the Central Bank Rate from 5.25% to 2.25%".
- (b) The Banks need to adopt the mindset that it is better to have an apple than lose the whole apple, which means that they should take a financial "haircut".
- (c) The Government could have reduced its expenditure on some of the infrastructure work and put those funds in say the Mortgage Corporation's loan Portfolio...to buy loans from the Bank at a 50% discount from the original value".

It is incredible that anyone can see this as a bolder and less naïve plan than the 10 point plan outlined by the PLP. For example, a 3% reduction on the Prime Rate would put the country's Foreign Reserves under such intense pressure that it would have the potential to affect the ability to maintain The Bahamas Dollar on par with the US Dollar; and it would have a savage affect on all savers including retirees, and person funds. For

example, it would represent a cost of over \$30,000,000 per annum to the National Insurance Board. This is unthinkable and recklessness.

Secondly, the suggestion about causing the Banks to take a financial “haircut” is at least as unwise.

Firstly, Governments must not be in the business of dictating to Banks when they are to adopt a specific mindset or what mindset is to be adopted. When a Government seeks to advance a specific policy agenda, it is for the Government to provide incentive and to negotiate mutually acceptable positions. That is precisely what the PLP plan does.

Furthermore, it is simply inconsistent with the second paragraph of the DNA’s own release which asserts that the Banks will resist the PLP plan because “banks are in the business of making money”. Accepting this as the case, the DNA offers no explanation as to why the banks, without any incentive from Government, take a “financial haircut?” More so the DNA says that the “haircut was to be in the form of the banks writing off half of all their mortgage loan balances in arrears. Since at January 31 2012 such amounts totaled some \$450,000,000.00, the DNA was simply saying to the banks to write off \$225,000,000.00. This is no “haircut”. It is a scalping, sufficient to destabilize the entire banking sector. The DNA cannot have it both ways, and their mortgage foreclosure plan is proof positive that they do not have policy positions with which to cause real and responsible change.

(8). Financial Aspects of The PLP Plan

The Tribune published an article on April 3, 2012 captioned “PLP Mortgage Plan’s \$100m Unfunded Gap”.

These are at least three major reasons why this is false:

(I). The Risk can be Insured

The PLP has received confirmation from the insurance industry that the reasonable possibility exists for the Government to purchase an insurance policy or other risk transfer product as a means of limiting the maximum impact of it’s Plan on the Public Treasury. Bankers are quite familiar with this concept because they themselves now limit their own Risk via something called Mortgage Guarantee Insurance.

Thus the maximum exposure of the Government could be:

- (a) The premium payable for the insurance policy; and

- (b) The deductible which the Government would have to pay in the event of a claim.

It would be impossible for these sums to rise to a level which would threaten the financial stability of the country and additionally, the fee charged to the homeowners will further mitigate the Risk to the Public Treasury.

(II). The Tribune Article Ignores The Real Answer to the Crisis – Job Growth

A root cause of this mortgage crisis is the lack of jobs – reflected in the fact that since the FNM came to office unemployment has doubled on a national basis and more than doubled at Grand Bahama.

This is the deeper challenge which has to be met because as family incomes are restored the mortgage foreclosure crisis shall reduce in significance, and accordingly the need for Government’s ongoing guarantee.

22,000 new jobs were created when the PLP was last in office. The Party’s commitment is to create more in its next term in office.

(III). The Estimated “Unfunded Gap” is based on an Incorrect Assumption

Fundamental to The Tribune's estimate of a \$100,000,000 “unfunded gap” is the assumption that the average interest rate on the mortgage loans guaranteed by the Government would be 8%.

That is 3.25% above the Prime Rate.

That would never happen, because no creditable Minister of Finance would provide a Government guarantee on any loan which carries an interest rate of Prime + 3.25% and no reasonable banker should expect it. The level of interest should reflect the level of risk and with a Government guarantee the risk profile is dramatically reduced.

Recognizing this single reality would result in the estimated gap of \$100,000 being revised down-ward. For example, if the assumption was a more creditable rate of Prime + 1%, the numbers would change as follows:

<u>Per Tribune</u> at 8%		<u>Assure Prime</u> +1% or 5.75%		<u>Difference</u>
- Annual Interest on \$450,000,000 Mortgages in	36,000,000	\$25,875,000		\$10,125,000.

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- Five year estimate \$180,000,000 \$129,375,000 \$50,625,000

Thus the estimated “gap” of \$100,000,000 would appear to be inflated by at least \$50,000,000.

Secondly, the PLP has made it clear that in finalizing its Plan, negotiations will take place with the Banks. Whether the final fee is 0.5% or determined by some other formula is a detail which can be worked out during the negotiations.

The fundamental commitment of the PLP is to end the mortgage foreclosure crisis – for critical reasons including:

- at the human level it is destabilizing families
- it is a significant drag on the economy. Specifically, it is preventing new home construction which in turn affects virtually every retail sector from fencing to furniture. This program would therefore be an economic stimulus.
- the magnitude of the problem is threatening to further depress the country’s overall credit standing.

At the end of the day, any financial shortfall would have to be placed within the context of the wider national interest, of Believing in Bahamians, and, for example could not possibly be anywhere close to the \$100,000,000 sum represented by the cost overruns associated with the New Providence Road Improvement Project.

(9). Other Observations from the Tribune Article Captioned “PLP Mortgage Plan \$100m Unfunded Gap”

- (a) The Tribune article points to “capital and profitability would be heavily impacted if (banks) were forced to write-off 100% of the unpaid interest and fees accumulated by delinquent homeowners. The same would also likely happen if the DNA plan, for banks to take a 50% “haircut” on troubled loans came to pass”.

This observation simply fails to reflect the specific contents of The PLP Plan, which spurns any notion of “force”. The very first item of the Plan is to “work with banks” to “agree a moratorium of 120 days”. Even though the government would have the authority to accomplish this by law, the expressed provision of the PLP Plan is to “work with” and “agree”. It is inconceivable that the banks would resist this invitation in light of the fact that at the present pace at which the foreclosed homes are being sold, it would take them the better part of ten years to clear their books.

In this regard, the PLP Plan differs fundamentally from the DNA position, about the banks taking a financial “haircut” without mention of any incentive or mitigating arrangement.

The PLP believes that a Government must not be in the business of **dictating** to Banks (or any other private business) when they are to adopt what mindset. When Government seeks to advance a policy agenda, it is for the Government to provide incentive and to negotiate mutually acceptable positions. That is precisely what the PLP Plan does.

- (b) The Tribune article asserts that “there was no consultations with the Bahamian commercial banking industry before the PLP announced its plan. That is simply not true.
- (c) The Tribune article quotes one banking executive as asserting that “we understand the effort to assist delinquent mortgage borrowers, but we need to examine what the implications are to banks’ capital and profitability”.

That is precisely what the Plan provides for.

- (d) The Tribune article quotes another executive who agrees that “some form of Government intervention maybe warranted but urged that such a scheme be properly thought out. We warned against penalizing borrowers in good-standing, and urged that those benefitting from any such scheme be “held accountable” with monies repaid over time.

This is the precise philosophy which underlies the PLP Plan.

Responses from Duane Sands, Chairman of the Mortgage Corporation

Duane Sands has in print or on a radio talk show made the following points:

- (a) The FNM has a Plan, which is more practical than the PLP’s PLAN.
- (b) The Mortgage Corporation has a major funding problem which is due directly to the large number of persons who got mortgages between 2002 and 2007, under the PLP – many of whom should not have gotten homes because they could not have afforded it.
- (c) If the PLP’s Plan was implemented, Banks will stop lending and if banks stop lending Bahamians will lose jobs.
- (d) “Under the PLP some \$5,000 was illegally added to Mortgage accounts to cover the cost of producing the housing units.

With respect to the first point, he is in direct contradiction with the PM, who admits that there is no plan but there is the renewed promise to produce one.

With respect to the financial position of the Mortgage Corporation:

- (a) Mr. Sands appears to be oblivious to the fact that between 2002 and 2007 the PLP administration built some 1400 homes - more than the FNM had built in the ten previous years. There is thus a sound and valid reason for the larger number of loans on the books.
- (b) When the home buyers got their homes, they were working and had income with which to pay their mortgages. Even, Mr. Sands has never asserted otherwise. The PLP cannot be at fault if after the FNM came to power people's family income fell, whether it was because of the global recession as the FNM asserts or the PLP asserts because of the global economic recession having been worse by the FNM policies such as increasing taxes and canceling contracts left in place by the PLP.
- (c) The matter about Bahamians losing jobs if the PLP's Plan was to be implemented is truly baseless. Critics of Mr. Sands may advance this assertion as evidence as to why Mr. Sands would do the Bahamas a real favor if he were to stick to being a heart surgeon, where he is an acknowledged expert rather than delving into finance where he is clearly out of his realm. The fact is that the provision of the PLP Plan to which he refers (item 8) is already the law in England. Yes, the PLP is planning to give the Bahamian in The Bahamas the same right which an Englishman has in England relative to any Bank being entitled to simply sell out his house without the borrower having any recourse. Banks live with that law in England. It is nothing but fear-mongering to suggest that Banks in the Bahamas will act differently from Banks in England.
- (d) The matter about the \$5,000 is a red herring and not relevant to this discussion.

(12) Creditable Conclusions

- (a) The mortgage foreclosure crisis was real from 2008 and as a matter of philosophy, the PLP supported the Prime Minister's announced intention to address the matter.
- (b) Regretfully, the Prime Minister never kept his promise to act. Meanwhile, the crisis has significantly deepened from 2008 when about 1000 families has non performing loans to the present when about 2700 families are in this position, and as unemployment has now reached record levels there are thousands more living in fear of losing their homes.
- (c) The PLP has committed itself to a 10 point plan which is fiscally sound, morally defensible, responsive to a real and deepening need and practical.
- (d) The Prime Minister and Mr. Duane Sands as Chairman of the Mortgage Corporation have responded with criticism and fear-mongering which are not supported by objective scrutiny.

- (e) The DNA has responded with comments which serve to establish it's close connection with the FNM when it comes to ideas and otherwise that is it void of any new and comprehensive ideas which can possibly bring about real and widespread positive change.
- (f) The Tribune's main article on the PLP Plan includes several comments from unnamed bankers who reflect incorrect assumption, and an incomplete assessment of all aspects of the PLP Plan .