Loan Modifications, Foreclosure & Bankruptcy

By John Skiba

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While some commentators are stating that the recession is now over, the new foreclosure record set in August would lead most to believe otherwise. Further, I am seeing less and less of my clients receiving loan modifications. I am of the opinion that the loan modification has turned into a cruel joke that gives false hope to many home owners. Many will stop making monthly payments at the suggestion of the bank only to later be denied a modification and have the home foreclosed on, or worse, to be granted a loan modification that only minimally reduces the payment (I saw a client the other day who received a whopping $7 – yes SEVEN – reduction in her modification), or even raise the house payment (happens more than you would think).

This leaves the question as to what other avenues do home owners have in trying to stay in their home and avoid foreclosure?

Short Sale

For some, if there are no other debt issues (like credit cards) other than the house, trying to short sell your home may be a good option. If you choose this route it is still wise to consult with an attorney to make sure it is the best option. Further, you need to have an experienced realtor help you through this process. It won't cost you anything and having someone represent you through the process will reduce a lot of the stress that comes with a short sale.

Important point – make sure that before you sign the documents to sell your home, that any second mortgage or home equity line of credit is dealt with appropriately. I am seeing a lot of home owners that have sold their home only to realize down the road that the 2nd mortgage that they thought had been forgiven is actually moving forward with a lawsuit to get the remaining balance. It is worth the money a real estate attorney will charge you to sit down and go over the document to determine what your future liability will be, if any.

Chapter 13 Bankruptcy

If your goal is to save your home, a Chapter 13 bankruptcy may be your best option. It is helpful to make this decision early on before you get too far behind on your house payments. Frequently I am meeting with people who have not made a house payment in 18 months to nearly 2 years. Even in a Chapter 13 bankruptcy you will have to catch up on the missed payments over time, and if that number is gigantic, it may not be possible.

In a Chapter 13 bankruptcy the court will stop the foreclosure of your home and permit you three to five years to get caught up on the missed payments. You will be required to begin making the monthly house payment as it comes due, PLUS, you and your attorney will put together a plan whereby you will be able to get caught up on the missed payments over the next few years.

In addition to getting caught up on payments, in a Chapter 13 bankruptcy you may be able to discharge your second mortgage or home equity line of credit. If the value of your home is worth less than what you owe on your first mortgage, then you will be able to "strip" off the second mortgage and discharge it as an unsecured debt (similar to a credit card). So for instance, if you have a first mortgage with a balance due of $150,000, and a second mortgage with a balance due of $75,000, and the value of your home is $125,000, you would be able to remove the $75,000 second and discharge it through your Chapter 13 bankruptcy.

Chapter 7 Bankruptcy

If you goal is to simply buy some time while you search for a new place to stay, a Chapter 7 bankruptcy will enable you to stay in the home for a few more months while you are locating your new place. A chapter 7 bankruptcy does not have the tools that a Chapter 13 bankruptcy has to allow you to get caught up on missed payments, but it will get you some additional time before you must surrender the home.

Attorney John Skiba offers a free consultation where your specific situation can be discussed. He can be reached at (480) 559-8131 or via email at jskiba@jacksonwhitelaw.com .