<u>Loan Modifications, Foreclosure, and Bankruptcy</u>

When it comes to loan modifications and the Home Affordable Modification Program (HAMP), the old mantra of, "Hope for the best, but prepare for the worse" could not be more true. Unfortunately, for most homeowners who are counting on a HAMP loan modification in order to prevent a foreclosure on their home, the ordeal they face is just a stepping stone to bankruptcy. But before I get ahead of myself with my explanation of why so many people who are in the loan modification process end up visiting a bankruptcy attorney and wind up in bankruptcy court, I would like to address the fundamentals of the HAMP loan modification process and why it has garnered so much deserved criticism.

How do loan modifications under HAMP work?

HAMP is "supposed to" (and if there was ever a time to state strong emphasis on "supposed to" this would be it) reduce a borrower's mortgage payment to no more than 31% of the homeowner's monthly gross income. That is, if the homeowner is able to demonstrate that their current mortgage payment is no longer affordable due to a financial hardship. You are supposed to be given a temporary 3 month loan modification, after which time, a decision is supposed to be made to determine if you qualify for a permanent loan modification. The whole purpose of the program is to reduce your monthly mortgage payments after you have suffered a financial set back and allow you to avoid facing a foreclosure of your home.

So what's the problem with the HAMP loan modification program?

It is an extremely long and grueling process that rarely results in the banks agreeing to a loan modification.

While at Church on Sunday with my wife (we were celebrating our 1 year anniversary that day by the way), I read something interesting that struck a cord with me. Mind you, this is not a religious message, but a short story about struggle and persistence. The homily spoke about Jesus telling a parable on the necessity of never losing heart. In the story of a widow who suffered injustice from her opponent, the judge was hardhearted, unconcerned with her rights or God's justice. The woman persisted in her demands, yet he refused to listen. Eventually, though, the judge was worn down by the woman's pleas and settled the case in her favor.

As has been documented time and time again since the HAMP program was launched last year, if you intend to secure a loan modification, then you had better be extremely persistent and be prepared to wear down the mighty banks. Like the Judge in the foregoing story, the banks will be hardhearted and unconcerned. Expect to make dozens and dozens of calls, faxes, letters, and so forth to the banks, all while being given different responses perhaps in the same day.

Who enforces the HAMP loan modification program? Who enforces the HAMP guidelines and ensures that people who qualify for a loan modification do in fact get one from the bank?

No one. The HAMP program is voluntary. The HAMP program is not law. Contrary to what some may think, you are not entitled a loan modification. The banks are not legally obligated to give you a loan modification even if you are able to demonstrate, as so many people have, that you qualify for a loan modification. And despite the hundreds of articles that have been written on the subject, I have been amazed at how little emphasis there has been to highlight this fact. That is until I read the Washington Post article this past weekend titled “With a change in approach, housing crisis can be eased” by Ezra Klein. And so, while the Treasury Department might give the banks a talking to from time to time, to date, despite such legal arguments as “third party beneficiary,” there has been no judge in the country that has ruled that banks must, *and not merely ought to*, approve a loan modification when the circumstances and numbers are there.

Are permanent loan modifications really permanent?

No. The term “permanent loan modification” is actually somewhat deceitful. The reason I say that is because there is nothing permanent about the HAMP loan modification program. There is a reason that you will see some articles putting the word permanent in quotation marks. If you are in the minority, those fortunate enough to emerge from this hellish process with that sought after “permanent” loan modification, then you need to understand that while cracking open that bottle of champagne might be in order, this is not in fact a permanent solution.

The terms of your “permanent” loan modification will only last for five years. What happens after five years? Well, that very low interest rate that you currently have, which has allowed for your much smaller mortgage payments, will be increased by 1% every year until it reaches a certain Freddie Mac cap rate. So, eventually (granted, years down the road) your mortgage payments will once again reflect roughly what you were paying before you were approved for a loan modification.

What happens to the money that is reduced by the banks if a loan modification is granted?

The banks are not giving you principal reduction. The difference between the original mortgage payment that you were paying and the monthly payments that took effect during the temporary and so called “permanent” loan modification period are not forgiven. The amount of savings is actually set aside in an account that the homeowner must pay upon sale, refinance or the maturity of the loan. So, those tens of thousands of dollars that you are able to save during the 5 year “permanent” modification period will have to be paid back to the banks eventually. As with student loans, this is basically a deferment. And as with any deferment, it will help you in the short run but it hurts you in the long run!