

## *FORECLOSURES PART 1*

### **LOAN MODIFICATIONS: SUCCESS OR FAILURE**

Many homeowners have been bamboozled by the propaganda. Banks, the media, and the government have touted the success and possibilities that have instilled in mainstream America a false perception of the success and potential of pursuing a home loan modification. Nearly 1.65 million loans were permanently modified nationwide from January through November 2010, that's compared with nearly 1 million foreclosure sales. But the scope of the problem remains enormous. About 5.1 million homeowners nationwide were behind at least 60 days on their mortgage payments as of Oct. 31, according to the U.S. Treasury Department. RealtyTrac has released data which shows that 2010 was a record year for foreclosure activity, and it projects that 2011 will be even worse. Government officials announced in February, 2009 that the \$75 Billion Making Homes Affordable Plan ("HAMP") would solve the housing crisis by saving 4 million family homes by 2012. This program is on track to help only 700,000 to 800,000. Though only about 30% of loan modifications are done through HAMP, the failure and default rate of loan modifications is comparable.

#### Problems with the Lenders

The modification process is infamous for bank staffers making it appear that all is well and no foreclosure is imminent. Unfortunately, most people anxious for good news regarding their home trust what the staffer tells them and assume that the staffers are being truthful. Homeowners think that what they are told is binding. PAUSE RIGHT HERE!!! If you take anything from this blog, remember, words are empty when discussing real estate transactions, verbal assurances mean nothing. If it is not in writing it is not binding. Nonetheless, if a borrower requests information on their foreclosure status, the lender must provide it. A borrower may also check the lender's active foreclosure web site to see if the foreclosure has truly been postponed.

#### Problems with the Process

During the discouraging and futile attempt to obtain a successful modification, a homeowner may believe the sale has been canceled and though it may have been postponed it has not been called off. Once a notice of trustee's sale has been recorded, the lender is not required to keep the homeowner informed of any new dates and does not have to re-record the notice. The lender or representative must only notify the trustee to proceed. According to state statutes, the lender need only orally declare the postponement and the new sale date on the originally scheduled foreclosure date.

However, not everyone knows to specifically ask for foreclosure status updates. To their own detriment, some homeowners simply rely on the misinformation they are given by the bank staffer, and are blind sided by a completed foreclosure sale and an eviction notice being posted on their front door. As crazy as this may sound, this is all legal.

#### Successful Modification

Despite the large numbers who do not qualify or who are foreclosed on prior to a modification approval there are a some who are approved. It is important to note that modification requirements are strict. They do not allow a grace period and generally require a trial period that does not cancel the foreclosure or cure the mortgage delinquencies.

Despite the paragraphs I have spent lambasting this process, loan modifications can be a benefit for

some. If you are struggling to make the loan payments, or are nearing bankruptcy, then it is in both yours and the banks best interest to renegotiate the terms of the loan. It is always best to attempt to obtain one sooner than later. To determine whether your situation is well-suited for a loan modification it is best to contact a loan modification attorney who can assess your financial situation and who is familiar with the modification process.

**Please Note: This blog is not legal advice. Do not treat it as such or rely on it without consulting your own attorney or advising your clients to do so. This material is presented for educational purposes only, to apprise homeowners of the current general state of foreclosure litigation and possible defenses available to a defaulting borrower. Each borrower's facts and circumstances are unique and the foregoing defenses and law may not apply to each situation.**