GOOD
ATTORNEYS AT LAW, P.A.
ARI B. GOOD, JD LLM

11/05/2008

Wherefore Art Thou Modification?

The present situation makes absolutely no sense whatsoever. When it comes to one's personal residence, the overwhelming majority of financially stressed homeowners not only want to stay in the home, but also to do the best they can when it comes to paying for it. Faced with foreclosures, many homeowners are calling and writing the loss mitigation departments at their lenders to see if the lender would be willing to modify the loan in some meaningful way. While granting the homeowner a respite from the monthly payments (known as a "forbearance agreement") helps, in this market "meaningful" really means modifying the loan principal. In a market where some home values are not only 50% below their 2005 *prices*, but 30-50% below what is *owed* on the property, lenders unwilling (or unable) to make these adjustments leave the homeowner with really only one logical choice – to walk away.

There's plenty of blame to go around: lenders who pushed byzantine mortgages with terms only people who use words like "byzantine" could understand (myself excluded), appraisers who were more than happy to add a "0" here and there, the politicians who basically mandated that the banks make lousy loans, and yes, we homeowners ourselves who – let's be honest – checked our common sense at the door.

But perhaps we should fix the *problem* and not the blame, and that's the hard part. The situation right now works for *no one*. Without any other option a homeowner who either can't afford the home and/or has zero chance next decade of ever getting the *debt* back abandons the property, letting not only the property go but also the lawn, pool, power and insurance. This homeowner faces ruined credit (if it wasn't ruined already), creditor calls day and night, and potential lawsuits and judgments. The lender loses because a home is a living breathing creature, so to speak, that needs constant maintenance, without which pools fill up with rotting leaves, small leaks destroy entire rooms, and the property becomes more attractive to criminals and scam artists than to bargain-hunters or investors. So much for collateral. The community loses by having blighted properties drag down the values of surrounding properties, if that's even possible. No good.

There is some light at the end of the tunnel. JP Morgan (and by extension its new acquisition, Washington Mutual) recently pledged around $70 billion to modify existing mortgages. In a similar vein, Bank of America (along with its subsidiary, Countrywide) has reached a settlement, "in principle" with Florida Attorney General Bill McCollum and others to provide a somewhat less ambitious $150 million ($20 million of which is theoretically earmarked for Florida homeowners) for mortgage relief. Each plan is similar in that it looks to be aimed at what are certainly the more notorious loans, the "Option ARMs" and their equivalents.

Simply put, if you have a loan for which you can choose your monthly payment – below interest-only (a "negative amortization" loan), interest only, or old-timey principal and interest, you might qualify under these hopefully-soon-to-be-implemented plans for relief. Caution is in order, however, as relief will likely be subject to a number of qualifications, including that the property was a personal residence and the homeowner was recently or will soon be evicted from the property. As with so many things, unfortunately, those of us who are current and trying to stay that way are probably NOT the ones in line for help, so the problem remains.

Anecdotally, most of the successful modifications to date have been with local banks that kept the loans on their own books and therefore have more authority over the terms. Even in these cases, however, the modifications were typically limited to reducing the interest rate from the double digits to single digits, hardly a feast, rather than a reduction in principal to anything approximating the fair market value. Nevertheless, if you have an "Option ARM" with or originally from Bank of America, Countrywide, JP Morgan or Washington Mutual, there may be hope for modification, so stay tuned.

I wish I had better news, but I'm at the helm looking for it every day. Our newly-minted President Obama has expressed some support for allowing bankruptcy judges to modify mortgages in the bankruptcy context, but if this is ever implemented it won't be for some time. So, in the meantime, remember what is MOST important – your health and your family.

I'll keep you posted!

Ari Good