

The Truth About Loan Modifications

(Fact vs. Fiction)

There are 7 ways to prevent or defend against foreclosure, but only 3 of them make any sense (*if you wish to remain in your home*), and only 1 of those 3 is actually realistic.

1) Reinstate your loan: a reinstatement is simply paying all of your back payments, legal fees and junk fees and then *continuing* to make your regular monthly payment until your loan is paid off or you are able to refinance. Well, if you had the money to reinstate, you probably would not be in foreclosure!

2) File a Chapter 13 Bankruptcy: Filing a Chapter 13 *will stop* a foreclosure, but a Chapter 13 is a *repayment* plan. All of your back payments or "arrearages" (including legal fees, junk fees, etc.) can be repaid over a period of up to 5 years or 60 months under the Chapter 13 plan.

Here's how it works: if your current monthly payment (which you are *not* paying) were \$1,500 and you are 8 months behind, your arrearages (*not* including legal fees, etc.) would total \$12,000. Under a Chapter 13 plan, your arrearages would result in an *additional* monthly payment of as much as \$1,000 or as little as \$200, depending upon the number of months that the court allows. Of course, *this is in addition to your regular monthly payment*, so your *new* monthly payment would be \$1,500 plus \$200 (\$1,700) or as much as \$2,500 per month (\$1,500 plus \$1,000), depending upon the number of months that the bankruptcy court allowed (12 months up to 60 months).

If your monthly payments *before* a Chapter 13 were *unaffordable*, under a Chapter 13, your payments *will increase*, assuming you have the income to support the Chapter 13 in the first place!

3) Loan Modification: *If you are facing foreclosure, and wish to remain in your home*, the only practical solution, is to restructure or modify your loan. And, the *only* reason for a loan modification in the first place is to *replace* an unaffordable (and often predatory) loan with an *affordable* loan — the loan you should have gotten in the first place!

But *there is a problem*. Servicers (the bank-owned entity that collects your monthly payments and has authority to act on behalf of the "securitized trust" that "owns" your loan), hate to modify loans. So, the servicer that you are or will be trying to induce to modify your loan *doesn't want to modify your loan*. **Period**. There are multiple reasons for your servicer's "reluctance" to modify your or anybody's loan and, instead, foreclose, but the primary reason is profit — the servicer's profit — it's generally more profitable for the servicer to foreclose than to modify.

The very servicer *you* have to try to influence enjoys *all* of the power, control, supremacy, clout and muscle, etc. *You have none!* And, no, *the government* isn't really on your side either! Although servicers are *supposed to* act in the best interest of the "owners" of your and thousands of other *securitized* loans, servicers generally look out for their own interest — *as long as they can get away with it!*

Add to that the fact that the California Senate's *banking* committee, working together with the banking lobby (*big-banks*), made it nearly impossible for homeowners to hire California attorneys to help them "negotiate" with *unwilling* servicers. In fact, California attorneys *may not* negotiate a loan modification or provide *any* loan modification or loan forbearance related assistance, or even communicate with *any* third-party (including *your* servicer) in your behalf. Period. (See, California Civil Code § 2944.7(a)).

This leaves *you* with two choices: **1) represent yourself** — negotiate your own loan modification terms with a servicer that almost certainly would rather foreclose and take your home than give you a loan modification. Think about this: if you received a *predatory loan* (and if your loan is anything *other than* a low interest fixed rate loan, with modest closing costs, that you *could afford then and now*, your loan was likely predatory, *then and now*), do you really believe that the bank (lender) that gave you that (predatory, unaffordable loan) is likely, through its *bank-owned servicer*, to *now undo* the damage and give you the loan you should have gotten in the first place? Or,

2) find out everything (and we mean *everything*) **there is to find out about your loan**, *then and now*, and fight for the loan modification you deserve. Simply *asking* your Servicer to modify or restructure your *unaffordable loan* isn't enough; **you must motivate your Servicer**.

Well, then, how do you do that — fight for the loan modification. How do you "level the playing field"? or "tip the scales in your favor"?

In our opinion, every (California) mortgage loan requires 3 independent examinations or *reviews* to uncover evidence of "improper" conduct by the parties that originated and now service your loan, particularly if your loan was "securitized." *Each* of these "Reviews" can have a significant impact on your Servicer's *willingness* to modify your loan, and may create sufficient leverage to *compel* your Servicer to modify or restructure your loan:

A. If your loan is in foreclosure, or in danger of going into foreclosure, *you need to know if your loan was securitized*. There are approximately 62 million securitized loans in the United States, so the odds are that your loan was securitized. Securitization simply means that your unique loan was bundled together with several thousand other loans, and transformed into a RMBS (mortgage-backed security) by a Wall Street investment bank and then "sold" to the "trustee" of the securitized trust that acts on behalf of the certificate holders/investors entitled to derivative income from all those monthly payments. The flow of funds from mortgage payments goes from borrower to servicer to trust to investors. If your loan was securitized, it is more likely than not that the bank or entity you are dealing with is acting *only* as a servicer for the securitized trust.

Whether your loan was securitized or not is established by an independently conducted *Securitization Report* or *Audit*. Securitization typically requires multiple transfers and multiple assignments of your loan documents. If your loan was securitized, the audit will (a) identify the "trustee" of the securitized trust that acts on behalf of the certificate holders that "own" the loan; (b) furnish the legal description of the RMBS/mortgage-backed security; (c) document the chain of possession or title of the applicable loan documents that you signed at closing to determine deficiencies in the chain of possession/title that, among other things, could stop a foreclosure and ultimate sale of your home; and, (d) *if the foreclosure process is pending*, whether or not all of the "foreclosure documents" are lawfully executed; if they are not, foreclosure is unlawful and subject to court injunction. Systematic robo-signing of foreclosure documents by servicers and their attorneys demonstrates the extent to which foreclosing parties are willing to go. The *Review* typically obtains a copy of the Pooling and Servicing Agreement (PSA) or legal contract between the trustee and the servicer which, among other things, defines *which loans can* be modified, *when loans should be* modified, and *how loans should be* modified. The PSA is extremely important in combination with the 2 other Reviews.

Let's be clear. If your loan was securitized, you not only need to know that fact, but you need to know *exactly* what happened *or didn't happen* (or *should* have happened); *when* it happened; and *how* it happened in the securitization process. This document is referred to as a **Securitization Report** or **Independent Foreclosure Audit**, and it is independently conducted by an experienced auditor with the skills and experience to find "the needle [loan] in the [securitization] haystack," plus all the applicable recorded documents.

B. Now that you know that servicers are *legally obligated* to act in the best interest of the Trustee and Trust that owns your loan, you need to know if (a) modifying your loan is in the Trust's best interest, or (b) if foreclosing on *your home* and selling *your home* to the highest bidder at a trustee's sale is in the Trust's best interest.

The only way to reach that conclusion is by conducting an **NPV Analysis** (or Loan Disposition Analysis). Every bank, lender, or mortgage loan servicer that offers (or claims to offer) loan modifications, does so pursuant to the government's **H**ome **A**ffordable **M**ortgage **P**rogram (HAMP — which was announced in March 2009), or pursuant to the servicer's own "in-house" modification program, or both. All banks, lenders and servicers who participate in HAMP, use an analytical platform which is provided to them by the U.S. Treasury Department.

When HAMP began in 2009, homeowners did not need to *qualify* for a [trial] loan modification; now they do. In fact, homeowners *must* qualify in terms of income, but not in terms of credit worthiness (your credit score *isn't* a factor, but your verifiable income *is* a factor).

The NPV Analysis uses an analytical platform based upon a model provided by the U. S. Treasury Department to participating banks, lenders and servicers. The NPV Analysis contains up to 36 pages, and establishes the **Net Present Value** of your loan by comparing the *net present value* of cash flows expected from a modification of your loan to the net present value of cash flows expected if there is no modification (foreclosure). The NPV establishes whether the securitized trust will *benefit more by modifying or restructuring your loan or foreclosing on your home* and selling your home to the highest bidder. **What could be more important than knowing that?**

If you qualify for a HAMP loan modification based on the financial information you provide, the NPV Analysis may establish that modifying your loan is in the best interest of the Trust, together with the clearly-defined terms and conditions of modification specific to *your loan*.

C. The third *Review* is conducted by our law firm and consists of an in-depth *review* of your loan from a legal point-of-view as it existed when you signed your loan documents. We author a signed *Legal Opinion* based upon that review, uncovering evidence of "predatory lending" and the consequences of the systematic misinformation, manipulation, and aggressive sales tactics perpetrated by lenders and their business partner mortgage brokers which lead to foreclosure and bankruptcy. The Legal Opinion cites applicable state and federal case law and, whenever possible, the *supporting conclusions* of the Securitization Report. In most cases, we *include* our Legal Opinion *at no additional cost* if the Securitization Report and the NPV Analysis are also conducted.

Let's recap: A Loan Modification is the best (and maybe the *only*) way to prevent foreclosure *and* secure an *affordable* modification or restructure of your loan, but the above *Reviews* may be the critical factors to attaining a loan modification or restructure.

By now, you should be clear that servicers work for and are contracted by the trustees of the securitized trust. Servicers have the authority to act on behalf of the trust and the certificate holders; but, *servicers do not want to modify those loans*, and since servicers typically operate independently of and without trustee supervision, servicers can and often do what is best for themselves — a *what the trustee doesn't know won't hurt the servicers* business model.

So, if servicers *nearly always* follow the *road to foreclosure*, then the strategy becomes one of putting up roadblocks *along the road to foreclosure* to "discourage" servicers from looking out for their own best interest! But, a loan modification must be negotiated in good faith; and, *negotiating in good faith* means applying for a loan modification or restructure based on the "neutral" or impartial findings of the NPV Analysis which shows that either a HAMP or a servicer's in-house loan modification is in the best interest of the Trust versus a foreclosure.

Neither the Securitization Report nor the Legal Opinion are typically submitted with the application. Both are held in reserve until needed. For example, if the servicer refuses to negotiate in good faith, or drags the modification process out indefinitely, and, if the Securitization Report finds that either (a) there is a *suspected broken chain of possession/title* (making foreclosure "stoppable" by the courts, or (b) with or without an "unbroken" chain of possession/title, the lawful foreclosure process has been compromised, the Securitization Report can be used to put the servicer "on notice" of actionable defects that can be used "in court," if necessary, to *preempt* the foreclosure process (temporarily or indefinitely) — at least until the "defects " are resolved to a court's satisfaction.

In almost all cases, the servicer (even if the servicer is a bank with a nationally recognized name), had no direct knowledge of the terms and conditions of the original loan — *i.e.*, the fact that the loan may have been *predatory*. As a result, the Legal Opinion, as an impartial, independent review of the loan documents, and a *written opinion* based upon that review, puts the servicer *on notice* of every irregularity, error, omission, violation that can be used to support a challenge to the loan itself, or defend against a foreclosure action, or both. Additionally, *in certain situations*, the trustee and the trust may be subject to liability for acts or omissions in the securitized mortgage transaction process. This could create an additional "problem" for the servicer *and trustee* — *another potential roadblock*.

After completing the *Reviews*, more often than not, we recommend homeowners take full advantage of experienced loan modification professionals going forward. Because of Cal.Civ.Code § 2944.7(a), our law firm is unable to negotiate with *any third party, including your servicer*, in your behalf, and we believe that your objective loan modification should be supervised by an experienced California loan modification company (which, incidentally, conducts the NPV Analysis).

The loan modification company ***does not charge for its services in advance***, but is paid *only* after a successful loan modification has been accomplished ***to your satisfaction***. This company will assist you to prepare your application for submission to your servicer. This company works directly with your servicer *and you*. Together, the NPV Analysis, the Legal Opinion, and the Securitization Report support your application and present a compelling reason to modify and/or restructure your loan.

The Securitization Report and the NPV Analysis are outsourced by our firm; accordingly, while we must pay for each review in advance, there are no finder's fees, commissions, or any other form of remuneration paid *to any third party*, including the aforementioned loan modification company. Furthermore, our law firm neither solicits nor accepts finder's fees, commissions, or any remuneration *from any third party*, including the loan modification company.

On request, we will send you samples of any or all of the above "reviews."

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