

Bankruptcy is often the best way out of a mortgage morass

Attorneys say bankruptcy court more effective than many loan modification efforts

Monday, December 20, 2010

By Tim Grant, Pittsburgh Post-Gazette



Stacy Innerst/Post-Gazette

Trying to work with a lender to modify an existing mortgage can be so onerous and complex that many borrowers give up. And it's not much easier for lawyers who work on behalf of clients facing foreclosure.

"What we have found is that it's easier to take someone facing foreclosure into bankruptcy because the modification process has no teeth," said Alan Patterson, a partner at the Gross & Patterson law firm, Downtown.

"As attorneys, we don't seem to have the ability to force banks that are foreclosing to modify the terms of their loans," Mr. Patterson said. "There's really no one to talk to on the mortgage side to get anything accomplished."

The federal government has tried to encourage lenders to modify troubled loans in an effort to get the economy back on track, but many borrowers remain mired in red tape even with help of an attorney.

Homeowners saddled with payments they can't afford are reporting that mortgage lenders are not always easy to deal with: Many of them lose paperwork. Their loan officers are

rude. Borrowers can never talk to the same representative twice and sometimes wind up spending all their limited resources making payments to save a house while relying on promises lenders make that don't come to pass.

"Customers looking to obtain a loan modification and use legal counsel to assist them will find it is extraordinarily expensive," said Ron Roteman, a partner and business and bankruptcy attorney at Stonecipher Law Firm, Downtown.

The time required to get a loan modification is very lengthy and chance of success are about 50-50.

"Dealing with lenders is very frustrating," Mr. Roteman said. "It's very difficult to have a conversation with the ultimate decision-maker. The file seems to get passed from one company representative to another.

"It requires the owner or their attorney to repeat the story every time they talk to someone," he said. "The whole process is highly undignified."

In Allegheny County, homeowners facing foreclosure can resolve their problems with lenders through the "Save Your Home" program established in January 2009 by President Judge Joseph James.

Participation in the program cannot start until the lender files a Mortgage Foreclosure Complaint action against the borrower in Civil Court.

When that happens, the sheriff's department will serve the borrower with the foreclosure paperwork along with an "urgent notice" advising the borrower of the Mortgage Foreclosure Program along with a hot-line telephone number to the Allegheny County Department of Economic Development.

Counseling agencies will contact the borrowers within 24 hours to accept them into the program and schedule a conciliation conference before Judge Michael E. McCarthy, head of the foreclosure division.

Judge McCarthy will sign an order that temporarily prevents lenders from being able to continue the foreclosure process while housing counselors try to help the borrowers to reach an agreement with their lenders.

"I can't predict the likelihood of a loan modification because it's really on a case-by-case basis," Judge McCarthy said. "But at least through the Save Your Home program, a counselor will carefully review your case."

Edward Mermelstein, a real estate attorney and a partner at Rheem, Bell & Mermelstein in New York, said residential mortgage modifications usually involve a reduction in the borrower's interest rate or principal loan amount or both.

"Since interest rates have dropped so dramatically in recent years, banks are more likely to entertain a discussion about dropping interest rates," Mr. Mermelstein said.

"Banks are less inclined to reduce the principal unless there is a compelling reason to do so. One example would be if the house value has dropped so dramatically that it's below the mortgage amount and the borrower is more likely to walk away," he said.

As long as a homeowner is still working and earning an income, Mr. Patterson said he is more inclined to help them by filing Chapter 13 bankruptcy on their behalf.

While in Chapter 13 bankruptcy, he said, he could put together a plan that would allow the borrower to catch up on the mortgage arrears and save the house over the course of the plan.

"That scenario only works if the borrower is still employed," Mr. Patterson said. "If they are not working and can't make payments, there is no way to save the house even under a loan modification."

Tim Grant: tgrant@post-gazette.com or 412-263-1591.

First published on December 20, 2010 at 12:00 am