

Combining Chapter 13 with a Voluntary Mortgage Modification

posted by Henry Sommer

First of all, thanks to the *Credit Slips* gang for giving me a chance to venture into blogging on their site. I hope people find my posts to be of interest.

Most of us are all too familiar with the failure of Congress to pass legislation allowing judicial modification of mortgages in chapter 13 bankruptcy cases. Sadly, our predictions of millions of foreclosures, most of which could have been prevented by that legislation, are coming true, and most knowledgeable observers believe the worst is yet to come. In the absence of a law requiring lenders to modify mortgages, creative bankruptcy attorneys have been doing the best they can with the tools that are available and are having considerable success.

Increasingly, consumer bankruptcy attorneys are combining loan modifications under the Obama Administration's HAMP (Home Affordable Modification Program) with chapter 13 plans that can eliminate or greatly reduce most other debts. In some cases second and third mortgages can even be eliminated in chapter 13. This strategy was made much more feasible by recent changes in the mortgage modification program directives that prohibit mortgage companies from discriminating against homeowners who are in bankruptcy cases. It also provides a mechanism for attorneys to be paid for loan modification work (as part of the compensation for chapter 13 representation paid through a chapter 13 plan) without requiring large up-front payments.

It is sometimes possible to obtain a loan modification before filing a bankruptcy case and then file the bankruptcy, under chapter 7 or chapter 13, to deal with other debts. But bankruptcy attorneys have also had success with submitting a loan modification request after a chapter 13 bankruptcy case has been filed, and incorporating the proposed modification into a chapter 13 plan to be approved by the court once the mortgage company agrees to modification.

Some bankruptcy courts, such as S.D.N.Y. and Rhode Island, have also begun mediation programs to help homeowners come to agreement with mortgage holders on loan modifications. A strong mediation program can ensure that homeowners are dealing with someone who has the authority to make a deal and can hold servicers accountable, preventing the "lost document" problems and other problems frequently encountered by consumers attempting to get modifications. Courts can hold lenders' feet to the fire by refusing to permit them to foreclose if they do not make a good faith effort to achieve a workable modification. Of course, voluntary mortgage modifications, especially the vast majority that do not reduce principal, are not as effective in the long term as the restructuring that chapter 13 provides for all other kinds of secured debts. But being able to obtain both an affordable mortgage payment through a loan modification, as well as relief from other debts, gives consumers the best chance under current law to keep their homes and get a financial fresh start. It should greatly ameliorate the problem of the high debt to income ratios that are causing some homeowners who have received modifications to default, even with their lower mortgage payments.

I would be remiss if I did not also put in a plug for the National Association of Consumer Bankruptcy Attorneys' Fall Bankruptcy Workshop, Nov. 5-6, where this strategy will be discussed in depth. Information about the workshop will be available shortly at www.nacba.org.

June 28, 2010 at 1:55 PM in [Mortgage Debt & Home Equity](#)

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Something I have been working on with our local state reps is to propose an amendment to our state foreclosure laws. The amendment I have been pushing for in our (non-judicial) foreclosure state is to have the servicing company to certify that the

debtors do not qualify for HAMP and that they in good faith reviewed the debtors application. (Still working on the language)

We have also been objecting to claims that don't reflect the temporary mod payments with the promise of a permanent mod. We are demanding that permanent mod as sort of a promissory estoppel type of thing..

Posted by: Patches | [June 29, 2010 at 09:52 AM](#)

Stoked to have you blog here! I have been using Consumer Bankruptcy Law and Practice guides for YEARS!

moment of geek over..

Posted by: Patches | [June 29, 2010 at 10:00 AM](#)

In March the Massachusetts court issued Emergency Standing Order 10-2, requiring that any loan modification terms waiving the automatic stay be "conspicuously identified" and "approved by the court in advance."

Posted by: Bostonbk | [June 29, 2010 at 01:02 PM](#)

For the past year, the National Association of Chapter 13 Trustees (NACTT) has been making debtors aware of and providing training to debtors' counsel regarding the HAMP program.

Chapter 13 trustees support the use of HAMP as part of a plan of reorganization that affords debtors the best opportunity to save their homes and obtain a true fresh start.

Posted by: Hogarth | [June 29, 2010 at 11:41 PM](#)

Great blog.

What happens if there is a trial modification, and a bankruptcy was filed after, and the homeowner failed the trial mod. How does this affect the bankruptcy case? File an amendment?

Posted by: [Laura Morton](#) | [July 05, 2010 at 10:53 PM](#)

We are about to address that same issue in a couple of weeks Laura. They can still re-apply after filing. There is nothing you need other than courts approval to consummate the deal post-filing. I would say to get them to apply again.

Posted by: Patches | [July 06, 2010 at 09:53 AM](#)

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Posted by: [ffxiv gil](#) | [September 02, 2010 at 12:08 AM](#)

Many real estate experts argue that keeping an existing monthly payment mortgage...Its nice post..

Posted by: [new york mortgage](#) | [September 22, 2010 at 06:15 AM](#)

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