LAW OFFICES OF

John T. Orcutt

Memorandum

From: Ed Boltz
Date: March 31, 2006
Re: Credit Reports for Mortgages

A recurring problem that we have is with clients complaining that since they didn't reaffirm a secured debt, that creditor isn't reporting their on-going payments to the credit bureaus, depriving them of those payments to help rebuild to their credit score.

This may not be such a big issue in the future with car loans, since we'll often file reaffirmations and because clients more easily grasp the risk of a repossession deficiency. It will continue to be an issue with mortgages, since ride-through is still the preferred option. The below steps will work for both personal property and real property, but I'll focus on mortgages.

The first thing when explaining this to a client is to make sure they understand the difference between the liability that the Deed of Trust creates against the house (i.e., if the mortgage isn't paid the house will be sold at foreclosure) and the client's personal liability (i.e., that they would owe any deficiency.)

It is also important to explain that not only does our paperwork discuss the choices we'll be making regarding reaffirmation and ride-through, but that the bankruptcy judge generally won't approve reaffirmations for real property. This is to counter-act the invariable statement made by the mortgage company that we should have had the client sign a reaffirmation.

The reason that a mortgage company might not report on-going payments is both out of spite on their part, but also out of an over-abundance of caution. If, instead of making all of their post-discharge payments on time, the client had been delinquent, there is case law holding that reporting such delinquency to a credit bureau is a violation of a debtor's discharge, since the debtor wasn't personally delinquent. Since they can get burned for reporting bad information, mortgage companies often take the safe route chose to not report any information.

One of the key facts of the credit reporting laws is that creditors can only report accurate information. They are not, however, **required** to report accurate information. They can instead chose to remain silent.

It is possible, nonetheless, for a client to still get their payment history included in their credit report., as follows:

1. The client should request a payment history from the mortgage company. (The mortgage company is required by law to provide one every year free of charge.)

2. The client should then file a dispute with the three credit bureaus, attaching a copy of the payment history.

3. The credit bureau is required to verify the accuracy of the debt with the mortgage company within 30 days.

4. At that point, the mortgage company can either

    a. Remain silent and then the credit bureau must accept the information provided by the client; or

    b. Accurately report information. The mortgage company would be hard pressed to explain how a payment history it prepared was inaccurate.

5. The client will need to repeat this process on a regular basis, to update the information.

6. Additionally, the client should keep the payment history, since that can be provided to anyone they're applying to for new credit.

This process, while a headache for our client, at least gives them a route to accomplish their goals, whether they follow through or not is a different question.