

Modesto attorney assists homeowners in making difficult yet necessary decisions

Due to a renewed emphasis by the government and banks on getting results in offering homeowners workout options for distressed loans, the timelines for mortgage delinquency and foreclosure have expanded significantly. “These longer timeline trends mean that homeowners may have more time to attempt to resolve a foreclosure, and they may have more options to choose from,” says John Villines, a Modesto real estate attorney who advises clients on the legal ramifications and options when a loan default has occurred.

Homeowners generally have three paths to choose from when faced with the reality of foreclosure: 1. Negotiate a loan modification or forbearance plan to lower the monthly payment; 2. Attempt to “short sale” the home to avoid foreclosure and legal issues; or, 3. Walk away in a “strategic foreclosure” which is rarely recommended.

Villines, who grew up in Manteca and has been practicing law for more than a decade in the Central Valley, is especially concerned that homeowners are becoming increasingly confused on the best course of action. “Each of these choices has significant pitfalls and long-lasting consequences, so careful planning is required,” Villines says. “Too often, the public is bombarded with conflicting information from a variety of sources - from the backyard fence to the Facebook wall. The problem is that everyone has a different “magic solution” to the foreclosure issue.” Professional advisors such as bankers, mortgage brokers, realtors, accountants and even attorneys often send mixed messages as well. “The foreclosure workout options are constantly changing, and many professionals know just enough to be dangerous,” Villines says. “It is imperative that homeowners seek help from a professional with a depth of experience and knowledge.” Villines says that too often the homeowner cannot keep up with the new information.

In a situation where one misstep can destroy what a homeowner is trying to achieve, sound advice is crucial. “It’s easy to become overwhelmed by it all and feel helpless,” Villines says.

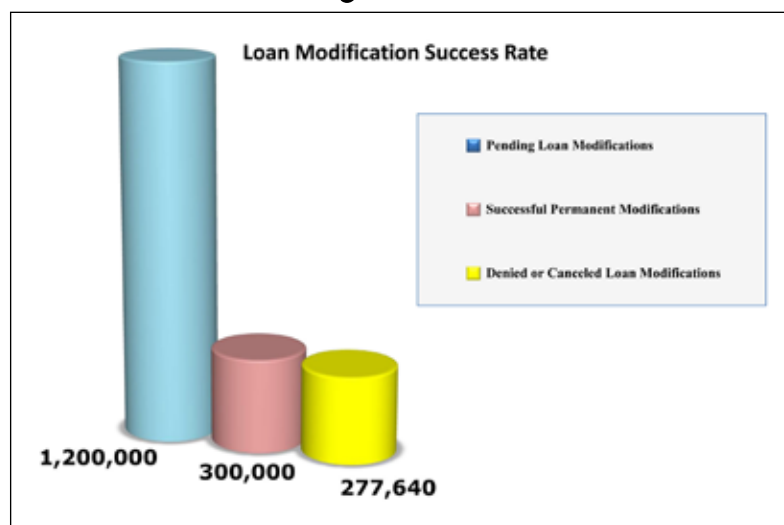
“The truth is that the best solution for a homeowner is often complex, and depends on many factors. If someone tells you there is a simple solution to avoid foreclosure, it is probably too good to be true.”

The Obama administration desperately wants to help people through the Home Affordable Modification Program, also known as “HAMP.” Experts estimate that there are currently 7 million borrowers with “distressed” loans. However, only approximately 300,000 HAMP loan modifications have been completed so far, which represents a small fraction of applications.

New statistics out this week put the success rate of HAMP permanent loans at 50 percent. The U.S. Treasury blames many of the HAMP failures on the homeowners themselves. Many borrowers are encouraged to apply for the HAMP loan modifications on their own, not knowing that even a small mistake could doom their application. “For example, the banks are telling customers to call in with financial information verbally over the telephone, and then using the lack of documentation to deny the loan modification,” says Villines, who assists clients with loan modifications as part of his legal practice. “I have concerns about homeowners who try to do it themselves and who are not aware of the pitfalls until it is too late.”

Homeowners are often subjected to seemingly endless hours on the telephone on “hold,” lost modification documents, false statements by bank representatives, and a general lack of cooperation. “Successful loan modifications are possible and they are happening,” Villines says, “but getting to that end result is like walking through a minefield. A homeowner needs an aggressive and persistent advocate.” Villines cautions homeowners to get advice from a professional before making any decisions on how to resolve a default.

Obama announced a major reworking of HAMP last month, broadening the qualifications for borrowers to obtain a loan modification and creating incentives for lenders to write-down some principal for loans that exceed



the property values. “These changes to the HAMP program address many of the weak spots that have appeared thus far,” says Villines.

“The main hurdle to homeowners utilizing the modification option was that the home would still be significantly ‘upside-down’ in value. Lowering principal is a huge step for the banks. These new changes necessitate a second look at the loan modification option by borrowers who are thinking about just walking away.” Villines believes for most people, a loan modification should be the first level of defense, and a strategic foreclosure should be the option of last resort.

Short sales can also be tricky. A short sale is where the homeowner sells the home for less money than what is owed the bank. Part of the new HAMP changes is that banks must now agree to allow short sales and deeds-in-lieu of foreclosure if a loan modification is denied and give the homeowners \$3,000 for relocation assistance. This is called the Home Affordable Foreclosure Alternatives (HAFA) program. “A short sale was never a sure thing with the banks,” Villines says. “The homeowner was always at the mercy of the banks to approve a short sale listing, but the new HAFA rules should change that aspect of the short sale process.”

This new HAFA program is a good example of the confusion that exists says Villines. “This program was first announced with much fanfare and excitement,” says Villines. “Yet when the government guidelines were published, they revealed that HAFA is not available to most people, and it has some major traps for the unwary,” Villines cautions. “If a homeowner is considering doing a HAFA short sale, I would strongly advise that they get legal advice beforehand. The lure of \$3,000 sounds great, but the downside of the program is huge.” Villines warns that the HAFA option only makes sense for a select group of people. “The good news,” says Villines, “is that this HAFA program is a sign that banks are ready to approve more short sale transactions and streamline the process. ‘Classic’ short sales are still a great option for many people facing a foreclosure.”

Short sales are of a greater benefit to homeowners than a foreclosure sale, as it has much less of an impact on credit scores. This option may also shorten the time frame for a homeowner to be able to purchase another home by a few years. This benefit is not without risks, however. “Short sales are a

great solution for many people, but come with all sorts of complications, especially if there is more than one loan on the property.” Villines says. “Many times a person will sell their home through a short sale and think their problems are over, but a year later they will receive a big tax bill from the IRS or is sued by the second mortgage for the debt that is still owed.”

Although real estate agents handle the bulk of the short sale transaction, these agents are prohibited by law from giving legal advice. “That is why it is crucial to get advice from a trusted attorney on all of the ramifications of conducting a short sale,” Villines says. “The stakes are too high to just hope it all works out.” Villines routinely works with real estate agents and homeowners throughout the short sale process.

Many borrowers are choosing to simply walk away from a devalued property. These “strategic defaults” also come with potential problems. “Our services include counseling clients on how to properly walk away from real estate,” says Villines. “We want to minimize the negative impact, and position our client for future home ownership.”

Overall, Villines cautions homeowners to get free advice from an attorney or a HUD-approved counselor before taking a particular course of action. “A misstep could have far-reaching tax, debt, and liability consequences,” says Villines. “It is critical that a homeowner knows all the options from an objective source. We educate our clients and craft a legal ‘plan-of-action’ to guide them through their economic crisis.”

Homeowners are encouraged to take advantage of JV Law’s free case analysis before making any decisions. Each unique situation will be evaluated, and homeowners will be advised of the options, strategies, potential ramifications, and the best course of action, taking full advantage of in-depth knowledge of the law and available programs. **To schedule your free appointment, call JV Law toll-free at 1-866-510-2068 or 209-524-9903. You can also get up-to-date information by visiting www.jvlaw.net.**



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