Foreclosure Loss Mitigation Underwriting-Borrower Beware!

By Charles R. Gallagher III

They finally admitted it! After a recent deposition, counsel for the bank candidly said, "Of course we use financials for loss mitigation purposes to target suitable judgment debtors for post judgment execution." After hearing the implausible party line mantra ad nauseum that confidential personal financial disclosure would only be used to determine what loss mitigation options best fit the homeowner's needs, finally a bank attorney was honest about the true reason banks seek financials from homeowners in foreclosure.

So what is loss mitigation underwriting? What is really necessary to determine if a mortgage modification is feasible? Sadly, loss mitigation is more art than science. Some lenders need three months to underwrite, while others need a month, some need a week, and still others can underwrite on the fly in an hour. Loss mitigation underwriting is the process in which the bank determines what, if any, foreclosure alternative best fits the homeowner. Options include a modification of the mortgage, short sale, or a deed-in-lieu of foreclosure. The catch is that in order to be "eligible for review" the bank or servicer will require that you provide confidential financial information (tax returns, bank account statements, hardship letters, etc.) all in the name of evaluation of which assistance best helps the homeowner.

There is no uniform mandatory standard for loss mitigation underwriting. Making maters worse, there is no mechanism for oversight to ensure that loss mitigation underwriting follows some identified methodology. There is nothing to prevent banks from pulling numbers out of a hat, forcing themselves to keep a straight face as they assure you their offer was the result of a rigorous and detailed analysis. So what is the harm if banks misuse such confidential financial information? Well it's no different than if you have provided your opponent in war the proverbial missile codes in advance of your attack. Armed with your tax returns and bank accounts, banks can carefully select who they want to pursue for deficiency judgments. With an eye into the borrower's bank account, lenders are now primed to select candidates for post-judgment execution.

At a recent Mortgage Bankers Association conference, a program titled "Turning Data Into Dollars: Data Mining, Analysis and Reporting" recommended data mining under the guise of loss mitigation underwriting. Industry leader Lender Processing Services offers data mining services to lenders in connection with loss mitigation applications. Additionally, another nationwide vendor to lenders and servicers, ComplianceTech, advertises "specialized lending intelligence services." Further still, many available job listings for mortgage default collectors now include data mining as a required skill set.

So when you receive a letter from your lender offering help that also asks for the disclosure of your most private financial information, think twice. Does this really help? Can the gratuitous disclosure of private financial information backfire on you? Much like the old adage of caveat emptor, borrowers would do well to beware when it comes to arming the bank with financials before it decides whom to target for deficiency judgments and post-judgment collection.

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