Arizona Bankruptcy Attorney: Loan Modification v. Chapter 13 Bankruptcy

By John Skiba

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It is estimated that by 2012 thirteen million (13,000,000) homes will have foreclosed in the United States. In a recently released report issued by The Congressional Oversight Panel it is predicted that less than 800,000 foreclosures will be prevented under the Home Affordability Modification Program ("HAMP"). Under those predictions that would mean that of those homes facing foreclosure only 6% will end up with a loan modification under the government sponsored HAMP program. These estimates largely mirror what I see in meeting with clients on a day to day basis. It has long been my estimate that less than 10% of my bankruptcy clients were actually receiving the loan modifications they were seeking. And those there were receiving the modification were getting an interest reduction but not any principal reduction.

Because of these dismal success rates for loan modification programs, many are turning to chapter 13 bankruptcy to help them save their home. A chapter 13 bankruptcy has many powerful tools to help people save their homes and even reduce some of what is owed – something I haven't seen a loan modification be able to do.

First, a chapter 13 bankruptcy will allow you to get caught up on missed house payments. A chapter 13 bankruptcy case will last between three and five years. The bankruptcy court will give you that amount of time to get caught up on your house payment by making a monthly payment to the trustee in your case. For instance, if you are $20,000 behind in house payments, in a five year chapter 13 plan you would be required to pay $333 per month to get caught up on the payments. During this time period you would not have to worry about foreclosure due to the automatic stay order entered by the bankruptcy court that would bar any foreclosure actions.

Next, if you have a second mortgage or home equity line of credit ("HELOC") you can possibly remove it through a process known as "lien-stripping." If the value of your home is less than what you owe on your first mortgage, you will then be able to remove any junior mortgage or HELOC. For example, if you owe $200,000 on your first mortgage the value of your home would have to be less than $200,000 in order to remove the second mortgage or HELOC.

If you are going through the loan modification process and are realizing what most have that have gone before you — that the modification isn't likely, then you ought to look into what a chapter 13 bankruptcy can do to help you save your home.

Attorney John Skiba offers a free bankruptcy consultation where you can discuss your specific situation. He can be reached at (480) 464-1111.