

***Marginal Successes, Revised Expectations, Broken Promises
– A Presidency in Review –***

**Proposed Chapter 13 Bankruptcy Reform Fails
the American Dream**

By Lawrence ‘D’ Pew, [Arizona Bankruptcy Lawyer](#)

When a consumer debtor seeks bankruptcy protection and debt relief through Chapter 13’s Wage Earner Plan, the creditor-lender to the primary mortgage cannot be ordered by the bankruptcy judge to modify the loan agreement. Certainly, the primary mortgagee may voluntarily agree to modified terms – this does happen, albeit too infrequently. As the law stood during the 2008 presidential campaign, U.S. Bankruptcy judges lacked the power to order modification of the debtor’s primary home mortgage. Such cramdown power is left to junior mortgages, as first in time is still first in right.

Obama Promised Reform: Giving Bankruptcy Judges Cramdown Powers Over First Mortgages

At a Colorado rally back on September 16, 2008, and at many additional campaign stops, then presidential candidate Barack Hussein Obama II promised to change the U.S. Bankruptcy Code’s treatment of indebted homeowners filing for relief under Chapter 13.

Boldly, Obama made this pledge:

“I will change our bankruptcy laws to make it easier for families to stay in their homes. Right now, if you’re a family that owns one house, bankruptcy judges are actually barred from helping you keep a roof over your head by writing down the value of your mortgage. If you own seven homes, the judge is free to write down any or all of the debt on your second, third, fourth, fifth, sixth or seventh homes.”

Ideally, this tough rhetoric would result in Congress passing legislation empowering bankruptcy judges to force mortgage lending banks to modify primary home mortgages, something that many experts still believe is absolutely essential to slow the national foreclosure crisis and mortgage meltdown that continues to destabilize American families and destroy the American Dream. But President Obama’s promised change to the Code did not happen, despite his proposals. Giving credit where credit is due, the Wall Street bank lobby is a powerful one that continues to cast its shadow over Obama’s promise of bankruptcy reform.

Broken Promise: Lawmakers Reject “Helping Families Save Their Homes Act of 2009”

On April 30, 2009, the U.S. Senate rejected Chapter 13 distressed homeowner reform through S.896 “Helping Families Save Their Homes Act of 2009” – an amendment (S.Amdt. 1014) sponsored by Sen. Richard Durban, D-IL, to a larger bill that would have allowed bankruptcy judges to cramdown new terms to a primary home mortgage. The bill failed 45 to 51 (3 not voting). The House had supported the primary home mortgage cramdown amendment in March 2009, but it died swiftly in the Senate.

On December 11, 2009, the U.S. House rejected yet another Chapter 13 cramdown amendment offered by Rep. Jim Marshall, D-GA, to another large financial reform bill. The House amendment failed 188 to 241 (11 not voting). Some suspect the amendment failed because too many of Speaker Pelosi’s House Democrats anticipated another quick death in the Senate, so they killed it first.

Why Didn’t Obama Fight for the Mortgage Cramdown?

In a February 2009 speech to a Mesa, Arizona, audience, Obama reiterated his promise to reform the U.S. Bankruptcy Code to permit judicial cramdowns on distressed primary mortgages:

“My administration will continue to support reforming our bankruptcy rules so that we allow judges to reduce home mortgages on primary residences to their fair market value, as long as borrowers pay their debts under court-ordered plans... I just want everybody to understand, that’s the rule for investors who own two, three, and four homes. So it should be the rule for folks who just own one home, as an alternative to foreclosure.”

When push came to shove, when cramdown amendments needed presidential support to win over Congress, why didn’t Obama throw his weight behind the very bankruptcy reform that he campaigned on and advocated? When the President had an opportunity to get behind the proposed cramdown legislation that he claimed to support, he was missing in action. Instead, he focused his attention and influence on minor credit card reform.

As *Foreclosures Surge*, a 2009 New York Times editorial, described the President’s silence this way: “[W]hen the time came to stand up to the banking lobbies and cajole ‘yes’ votes from reluctant senators, the White House didn’t. When the measure failed, there wasn’t even a statement of regret.”

As a result, we have the [Troubled Asset Relief Program](#) (TARP), and we have the [Home Affordable Modification Program](#) (HAMP). But we do not have the single most effective bankruptcy tool needed to help struggling homeowners with distressed primary mortgages avoid foreclosure and stay in their homes. Without substantive judicial cramdown power, Chapter 13 is merely a speed bump in the Wall Street banks’ low road to foreclosure.

Sources:

St. Petersburg Times: [The Obameter – Allow Bankruptcy Judges to Modify Terms of a Home Mortgage](#)

ProPublica.org: [Dems: Obama Broke Pledge to Force Banks to Help Homeowners](#)

Reuters: [U.S. House Rejects Mortgage “Cramdown” Measure](#)

The Atlantic: [The Consumer Financial Protection Agency Lives, Cramdowns Fail](#)

NYT: [As Foreclosures Surge...](#)