

# Warning! Loan Modification No Guarantee to Prevent Foreclosure

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Banks, the media, and the government have instilled in mainstream America a false perception of the success and potential of pursuing a home loan modification as a means of avoiding foreclosure. Nearly 1.65 million loans were permanently modified nationwide from January through November 2010, that's compared with nearly 1 million foreclosure sales. But the scope of the problem remains enormous. About 5.1 million homeowners nationwide were behind at least 60 days on their mortgage payments as of Oct. 31, 2011, according to the U.S. Treasury Department. RealtyTrac has released data which shows that from January to July 2012, 1,486,987 homes had active foreclosure activity.

## **Loan Modification: Problems with the Lenders**

During the loan modification process, bank staffers often make it seem that all is well and no foreclosure is imminent. Unfortunately, most people anxious for good news regarding their home will trust what the staffer says and assume that the staffers are being truthful. Homeowners also think that what they are told is binding. **PAUSE RIGHT HERE!!!** If you take anything from this blog, remember: words are empty when discussing real estate transactions. In other words, verbal assurances mean nothing. If what the staffer says is not also stated in writing from the bank/lender, it is not binding. Keep in mind, however, that if a borrower requests information on the status of the foreclosure, the lender must provide it.

Tip: A borrower may check the lender's active foreclosure web site to see if the foreclosure has truly been postponed.

## **Loan Modification: Problems with the Process**

During the loan modification process, a homeowner may erroneously believe the foreclosure sale has been canceled. Though the foreclosure may have been postponed, in reality the sale has not been called off. Once a notice of trustee's sale has been recorded, the lender is not required to keep the homeowner informed of any new dates and does not have to re-record the notice. The lender or representative must only notify the trustee to

proceed. According to state statutes, the lender need only orally declare the postponement and the new sale date on the originally scheduled foreclosure date.

However, not everyone knows to specifically ask for foreclosure status updates. To their own detriment, some homeowners simply rely on the misinformation they are given by the bank staffer, and are blindsided by a completed foreclosure sale and an eviction notice being posted on their front door. As crazy as this may sound, this is all legal.

### **Successful Loan Modification**

Despite the large numbers of homeowners who do not qualify for loan modification, or who are foreclosed upon prior to a modification approval, there are some whose loan modifications are approved. It is important to note that modification requirements are strict. For example, the requirements do not allow a grace period and generally require a trial period that does not cancel the foreclosure or cure the mortgage delinquencies.

Despite the above cautions, loan modifications can be a benefit for some. If you are struggling to make the loan payments, or are nearing bankruptcy, then it is in both yours and the bank's best interest to renegotiate the terms of the loan. It is always best to attempt to obtain a loan modification sooner rather than later. To determine whether your situation is well-suited for a loan modification it is best to consult with an attorney experienced with the loan modification process and who can assess your financial situation to determine your options. Contact the experienced real estate attorneys of Andrews Law, PLC at 480-237-9756 to schedule a confidential consultation.

Please Note: This blog is not legal advice. Do not treat it as such or rely on it without consulting your own attorney or advising your clients to do so. This material is presented for educational purposes only, to apprise homeowners of the current general state of foreclosure litigation and possible defenses available to a defaulting borrower. Each borrower's facts and circumstances are unique and the foregoing defenses and law may not apply to each situation.