<u>Why Loan Modifications May Result in Bankruptcy</u>

This blog is a follow up to my previous article titled, "*Loan Modifications, Foreclosure and Bankruptcy*" In this article, I would like to focus on the fact that the HAMP program goes beyond merely offering false hope, but in fact leads to what could have been a preventable chapter 13 bankruptcy filing. Allow me to explain.

The process of getting a loan modification almost always takes months and months. First, comes the grueling process of getting the bank to actually consider you for a temporary loan modification. Then, theoretically after three months of on-time payments, the bank is supposed to decide on whether or not you have been approved for a permanent loan modification**.** I say theoretically because a loan modification approval/denial can take as long as one year to receive. And after ten months of phone calls, letters, pleas, a tremendous amount of stress, and not to mention timely reduced mortgage payments, the bank will most likely tell you that you do not qualify for a permanent loan modification. In addition, the bank will tell you that you now have 30 days to catch up on your arrears. So, if you cannot come up with thousands of dollars to make up the arrears, the foreclosure proceedings will immediately begin.

Take for example "Jane." Jane is a self-employed, single mother who up until recently had very good credit. Jane's business begins to suffer as the economy takes a turn for the worse. Money is now tight. Despite her financial set-back, Jane is able to keep up with her mortgage payments as long as she cuts back in other areas. However, Jane begins to hear more and more about loan modifications. One day, she runs into a "nice gentleman" who promises her that he will be able to get her the magical permanent loan modification for a fee of only $2,000. Jane signs up with the nice man. Ten months later, Jane is sitting in my Alexandria, VA bankruptcy office talking to a bankruptcy attorney for the first time in her life. <u>And here finally comes my point</u>-- The travesty is that Jane, while she suffered a financial set-back, still could have managed to cut back on her expenses and continue paying her original mortgage payments had she not been lured in by the banks with their proverbial "pot of gold" known as loan modification.

What could Jane have done in order to avoid having to file a chapter 13 bankruptcy case? For starters, she should have never paid any money up front to that "nice gentleman" who promised her a loan modification. Jane should have gone to see a Housing and Urban Development (HUD) certified counselor who would have helped her free of charge. Second, she should have consulted with a lawyer, perhaps an Alexandria, VA bankruptcy attorney, who would have offered her some honest advice. Such an attorney could have warned Jane of the dangers of what she was about to do. Such an attorney could have explained to her that she was now taking a gamble and that she needed to cover her losses; the eventual likely scenario of her permanent modification being denied. Jane would have been told that she should save the money she was not spending due to the reduced mortgage payments. This way, if the permanent loan modification was not granted, she would have the money to immediately catch up on the arrears and not face a looming foreclosure and eventual chapter 13 bankruptcy filing.

Well, at this point you might be saying, hey genius, Mr. clever Alexandria, VA bankruptcy lawyer, most of us simply do not have the means to put aside every month the difference between the reduced mortgage payment and the original mortgage payment. If we had that kind of money we would not have bothered with a loan modification in the first place. You are absolutely correct. Though, <u>and here comes my next point,</u> had you been warned from the outset that you would likely face ten months of reduced monthly mortgage payments only to face the denial of your loan modification application and subsequent foreclosure on your house, then you would not have "donated" all that money to the bank. Rather, you could have cut your losses, rented a much cheaper apartment, and moved on with your life.

It is almost like the bank intentionally lured you down the path of reduced monthly payments knowing full well that in the end they would deny your application. After all, mathematically speaking, what results in more money for the banks? Ten months of reduced mortgage payments followed by a foreclosure or putting an end to their cash flow by immediately moving in for foreclosure? And besides, they have the Treasury Department and the White House to impress. And that is why many pundits refer to the loan modification program as "extend and pretend." As in, banks extend temporary loan modifications for a while, take some photo ops, all the while pretending that they will grant you a permanent loan modification.

So what do banks and loan sharks have in common? Sure, they both give out loans. But while one is armed with the threat of brute force, the other is armed with something far more powerful than that…the law!