

Foreclosure Sales Will Increase In 2012

By: Attorney Jill Phillips – <http://www.phillipslaweast.com>

We met with many clients in the last year that were over 12 months behind on their mortgage payments. The shocking fact is that they still live in their home and do not face foreclosure sale as of this date. Why this is shocking is because traditionally, a home would be foreclosed upon within 6 months of missing payments. In fact, if we traveled back in time to 2000, you would never hear a home owner say, “Yes, I am 12 months behind on my mortgage and still living in my home.” This would have been a complete fantasy at that time.

So, why is it that a consumer can be behind over 12 months and not have a foreclosure sale upon them? There is a lot of guessing by consumers as to why they can be behind on their mortgages over 12 months and still be living in the home. Some consumers believe that the mortgage companies know they were in the wrong and that is why they know better than to foreclose on them. “I was told that Obama would save my house under the HAMP program.” “I also heard that mortgage companies will not throw someone out of their house because it would be bad press.” These are some of the ideas that consumers have.

In reality, these ideas are not valid. The truth is that recently mortgage companies did not initially foreclose on properties as they traditionally would in the past because they did have their paperwork squared away. Mortgage companies needed time to clean up their servicing procedure and to ensure that they have the necessary paperwork allowing them to foreclose within the guidelines of the law. The Commonwealth vs. Fremont Investment & Loan (452 Mass. 733 (2008)) outlines why mortgage companies needed to clean up their paperwork before starting to initiate foreclosure sales. This case is often misunderstood and misused by attorneys to give false hope to consumers. Attorneys use this case as justification to say that they can stop foreclosure sales and save consumer’s homes from the bank. Attorneys can stop the sale if the bank’s paperwork is not appropriate at the time it applies for foreclosure sale from the court. However, if the bank gets its paperwork in line with the law, the bank can then foreclose. Attorneys do not have the ability to wave a magic wand and save a consumer’s home indefinitely if the consumer is behind on their mortgage.

Consumers must understand that if you are behind on your mortgage payments, the bank will ultimately foreclose on your home. There is no great secret in the paperwork or in the HAMP program that is stopping the banks from foreclosing on homes. The fact is that banks needed to get their paperwork files cleaned up to be ready to ask a court to foreclose.

Pursuant to Fitch Ratings, the banks corrected their paperwork issues and will be foreclosing on delinquent mortgage that have over 12 months of arrears starting in 2012. What does this mean for these consumers who are behind on their homes over 12 months? It means that all false thoughts about why banks are afraid to foreclose are

proven wrong. It also means that these voodoo attorneys and forensic auditors promising salvation when there really isn't any salvation will no longer be able to hurt the consumers with false hope.

What should consumers do if they are in this situation? They should seek the advice of a consumer advocate. The options would be to consider applying for a loan modification with professional help and to review bankruptcy relief options. The last thing a consumer should do is just wait it out. I know that it is a more attractive option to not pay the mortgage and continue to live in the home for free. Who would not like that option? The problem with that option is that if you just wait it out, you will miss your opportunity to try and figure out your mortgage situation. Once banks start to foreclose on homes, they will also start trying to collect on deficiency judgments. Then, the consumer's financial issues will intensify and lead to even greater issues.

So, consumers be prepared and get out ahead. Do not wait it out, your window of opportunity is closing.