

FORECLOSURE DEFENSE AND MORTGAGE MODIFICATIONS

Reasons for the Expected Increase in Foreclosure Filings

Recently there was a settlement between 50 State Attorney Generals and the nation's biggest banks regarding "robo-signing" and other unlawful activities. During the negotiations the Banks held off on starting new foreclosure cases. As of February's settlement the Banks will pay 25 billion dollars in damages and fines. Now that the cases are settled the Banks are going to go back to their old ways and pick up where they left off. We expect to see a flood of new foreclosure cases over the next 12 months.

The Modification Process

The mortgage modification process is a sham. If your lender is not offering you a permanent modification that is recorded with the county clerk just like a "brand new mortgage" there is a good chance that the modification is totally unenforceable by you. In other words it is nothing more than an agreement to agree. In the meantime you are being induced to make "modified" monthly payments pursuant to an agreement that is not a contract and is by no means permanent.

Judges Require "Good Faith"

New York is one of the few states that enacted laws to ensure that the Banks deal with borrowers in good faith. This means that settlements are reviewed by the Court and must be approved. Courts often penalize Banks for bad faith dealings with borrowers. The process is complicated; this is why you need to be represented by competent counsel. Most borrowers do not realize how much power they have in the process. You have rights to be treated fairly in the process that you may not be aware of.

The Bank May Not Even Own Your Loan

The scariest part of this process is that you may be negotiating with or being foreclosed on by a party that has no interest in your loan. The notion that there is a real "bank" behind all of this is a thing of the past. You are negotiating with a "Servicer". The Servicer is hired by the investor pool to negotiate a settlement. However, your loan has been transferred so many times that it is highly likely that the Servicer has no authority to negotiate or to foreclose.

We Make Them Prove Their Case

The Servicer's paperwork is often a total mess. It is also more likely than not that the Servicer cannot prove who they represent. Likewise, they cannot prove they have the right to do anything on the investor's behalf. In other words they have no "standing" to be the Plaintiff in the foreclosure action. We attack the "chain of custody" of your loan

documents and also the “chain of authority” of the lender’s documents from the day you took the loan to today. When we find errors, omissions or outright fraud and forgery in the chains of title and authority (which we almost always find) we attack the lender and make motions to have the proceedings dismissed.

The Modification Process is a Sham

We have seen hundreds of people be jerked around by Mortgage Servicers during the modification process. How many times can a Servicer lose paperwork and claim they never received mail or faxes or lost files? How many hours can they make you wait on hold waiting for a customer representative to speak with you?

The fact is that Servicers do not take you seriously until there is a Judge monitoring the process. Fortunately, Courts take the good faith requirement that Servicers treat borrowers fairly very seriously. Unfortunately, Courts cannot and do not monitor the modification process until your lender actually starts a foreclosure and serves you with a Summons and Complaint.

Borrowers need an expert to dissect and negotiate the mortgage modification contract. Most mortgage modification contracts are not worth the paper they are written on. They may be unenforceable by the borrower.

None of our clients wants a “free house”. We know you borrowed the money and that you owe it to someone. The question is can they take your house. In many instances they cannot. In other words they can get a money judgment on the note but they cannot enforce the mortgage in foreclosure. Strategy is everything.

Our strategy is to defend against who commenced a foreclosure action. They are much more likely to make a deal where they get something instead of nothing at all. We will help you to understand what you can do to navigate your way out of this stressful and unpleasant situation. It is really not as bad as you think. The law is on your side.

Go to this link and [read the article](#) we wrote that explains why the pre-foreclosure modification is more of a myth than a reality.

Most importantly you want attorneys that will guide you through the process and fight for you. The most important thing is the roof over your head. We want to keep it there.