

## TITLE OF COLUMN: SIDEBAR

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### Foreclosure: Should I file Bankruptcy or Try To Modify My Loan?

You receive a Notice of Default listing a date within which you must cure your mortgage (including arrears) or risk the sale or public auction of your property. Should you file bankruptcy? Should you call your lender and ask for more time, or, better yet, attempt to modify your current loan?

Unfortunately, this is an all too familiar scenario and one that is increasing with alarming frequency throughout the state.

### The Viability of A Loan Modification?

Loan modification is where a lender will restructure the terms of a loan to enable a distressed borrower to avert foreclosure. Whether it be freezing or fixing an interest rate on an adjustable rate or simply tacking the arrears to the back end of the loan, where a distressed homeowner does obtain a modification, it can be a profound economic and emotional relief.

However, recent reports have shown modifications trending downward, with most lenders stalling or outright denying most modification requests. Some have suggested that one of the reasons for this is the overwhelming influx of homeowners applying for this option. The “loss mitigation” departments of lenders are often ill equipped to meaningfully evaluate each homeowner’s situation and thus may simply default to denying the request without much analysis. (As an anecdotal example, one single Countrywide negotiator was said to have 887 loan modification files to review).

Applying for a loan modification may be as complicated as getting a mortgage in the first place. It is an involved process requiring the submission of various documents, financial and otherwise, and a hardship letter outlining your need for the modification. It requires some knowledge of mortgage and lending terminology and, in the case of federal loan programs, some bureaucratic obstacles to overcome.

Compounding the situation is the fact that most borrowers don’t even know which lender controls the loan: loans are often bought, sold and transferred rather frequently over the lifespan of the mortgage.

As a result, many homeowners have turned to professional “foreclosure consultants.” Given the lender’s current predispositions, these professionals can prove quite helpful since they may be former loan or real estate agents who possess a familiarity with these loans. (One caveat: research the background of the business you choose to modify your loan. California law, which places restrictions on those who offer foreclosure services, require full disclosure of the specific services offered. Suffice it to say, cast a suspicious

eye on anyone guaranteeing results in these matters.) Nevertheless, loan modification or foreclosure specialist can and do assist homeowners navigate the loan modification process, review the necessary documents, negotiate on behalf of the homeowner and/or inform a homeowner of the various federal or private modification programs available. At the very least, such services spare the homeowner the unenviable task of negotiating with lenders by turning it over to a professional who will advocate on their behalf.

#### Bankruptcy and Loan Modifications:

The filing of a bankruptcy can actually motivate a response from a lender where they were otherwise unwilling to negotiate. Al Capone once said you could get more with a kind word and a gun than you can with just a kind word. The gun in this case can be a Chapter 7 bankruptcy.

While one should never file bankruptcy unless it is absolutely appropriate, our office found that banks are much more open to negotiating with a homeowner where that homeowner has filed bankruptcy or has expressed her desire to simply walk away from the property. (Note: a Chapter 7 bankruptcy does not dissolve a borrowers' mortgage nor does it adjust loan terms but it will stop the foreclosure process). Upon filing bankruptcy, some, but certainly not all, banks have offered reaffirmation agreements with favorable mortgage terms.

While the prospect of foreclosure is a daunting one, there are options available that may be appropriate to homeowners and, while bankruptcy is certainly not appropriate for everyone, in those cases where it is available, it can prove to be an effective impetus to negotiating a loan modification.

*Jody Togonon is an attorney and principal of the TOGONON LAW OFFICES, a full service law office specializing in bankruptcy, personal injury and immigration matters. THE TOGONON LAW OFFICES also now offers loan modification services through its newest member, Christopher Luzano, a loan modification consultant. THE TOGONON LAW OFFICE offers a free online consultation at its website at [www.togononlawoffices.com](http://www.togononlawoffices.com)*

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