

LEGAL TIPS

Foreclosure Reality, Ill. Initiatives

In today's complex economy, external factors frequently trump logical foreclosure solutions and results. Lenders overwhelmed with mortgage defaults are foreclosing, even when loan modifications could cut or limit the lenders' losses. Why are lenders doing that? Because the foreclosure process is distorted by other economic issues.

Many lenders are afraid to recognize the extent of their mortgage losses. Foreclosing postpones that blow. Modifying securitized mortgages is more complicated because loan pool servicers and trustees are accountable to investors in different tranches with conflicting financial interests. Efforts are underway in

Illinois to restore logic and reason to the process.

The Circuit Court of Cook County has implemented a program requiring loan servicers to communicate with the homeowner in a foreclosure mediation process established by the Court. For mediation to work, lenders have to consider whether or not a loan modification makes sense. On Nov. 16, Illinois Attorney General Lisa Madigan addressed that issue by introducing House Bill 6951. It would require lenders to seriously consider loan modifications that would reduce their foreclosure losses.

Madigan's bill focuses on a wide range of

foreclosure problems and abuses, not just the "robo-signing" of deceptive or false foreclosure affidavits. It would make it difficult for foreclosing lenders and loan servicers to circumvent existing legal requirements without suffering serious consequences. In addition, it would require that lenders consider the economic realities of "underwater" mortgages, mitigating their own losses – rather than postponing that day of reckoning.

The bill would require lenders to state in writing that they considered modifying a mortgage before filing suit to foreclose it and explain why they decided not to do so. That logical step, amazing as it seems, is not part of what lenders do. Enactment of the bill could save lenders money, reduce the number of foreclosures, help Illinois residents stay in their homes, and might even help to stabilize home values.

While foreclosures are down nationally, the numbers continue to rise in Illinois. The number of loan modifications in Illinois is declining as foreclosures are increasing on the North Shore. Meanwhile, what can a struggling homeowner do?

First, avoid scam artists who try to take advantage of homeowners in distress. If a homeowner is asked to pay in advance to solve their problem, that homeowner should hold onto their wallet and call the Illinois Attorney General's office. Such mortgage rescue scams are widespread. Illinois has adopted the Illinois Mortgage Rescue Fraud Act to outlaw that type of consumer fraud.

One option is to seek free mortgage counseling from a local HUD-certified organization before foreclosure. The Circuit Court of Cook County maintains a website for free assistance at cookcountyforeclosurehelp.org. In Cook County, CEDA, a HUD-certified mortgage counseling organization is part of the Court's mediation program. Legal defense is available through affiliated volunteer legal services programs. Unfortunately, there's a huge demand on those programs and their services.

If a homeowner decides to hire an attorney to help them, they should make sure that attorney understands the issues that they face. The sooner an attorney is hired, the greater the likelihood he or she will be able to help the homeowner. However, no attorney can guaranty results.

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