

DONET & DONET, LLP

A Tradition of Excellence in Law

REAL ESTATE ! FORECLOSURE DEFENSE ! LOAN MODIFICATIONS
PROBATE AND GUARDIANSHIP ! BUSINESS LITIGATION ! CHURCH LAW

12855 S.W. 132nd Street, Suite 207, Miami, Florida 33186
Telephone: 305-969-6626 - Fax: 305-969-6623
Web: www.DonetLaw.com Email: info@donetlaw.com

What To Do If You Don't Qualify For A Refinancing Or A Loan Modification Under The President's Plan

It's all over the news! The President's "Making Home Affordable" plan for saving our homes is supposed to be the cure for all of our mortgage problems. Or is it?

The truth is that even though this is a very good plan, the majority of Floridians - especially South Floridians - will not be able to either refinance or modify their mortgage loans through this plan.

Why? Because it's voluntary. Even those banks that accepted federal bailout money, like Bank of America, JP Morgan Chase, Countrywide and others, which are required to modify their mortgage loans, are only required to do so if - **and only if** - it costs them less to modify than to go forward with a foreclosure.

What does that mean for South Florida? Consider this, real estate prices around here have dropped by almost 40%. Most homeowners owe the bank as much as 30% to 40% more than their homes are worth. Therefore, forget about refinancing, as you can't do so if you owe more than 105% of the value of your home. As to loan modifications, it would cost the bank less to foreclose on your home than to absorb the losses required to modify your mortgage loan under the President's plan.

Let's see how it works. First, let's discuss refinancing. Step one, your mortgage must be owned or held by Fannie Mae or Freddie Mac. That's the first problem. Many, if not most mortgages issued by banks in South Florida between 2005 and 2007 were packaged by the banks and sold to Wall Street investment goliaths who are now stuck with those mortgages. Therefore, if the loan is owned by one of those firms, you cannot refinance under the President's plan.

Let's assume, however, that you are one of the lucky ones and your mortgage is owned by Fannie or Freddie. In that case, a current appraisal of your home (conducted by the bank's appraisers) must show that you owe not more than 105% percent of the value of your home. What does that mean in dollars and cents? Let's consider this example. Let's say that your property appraises for \$300,000. In that case, your first mortgage (and only your first mortgage) cannot be any higher than \$315,000. ($\$300,000 \times 105\% = \$315,000$). People who bought in Kendall, Miramar, Pembroke Pines and Boynton Beach, for example, often paid over \$400,000 for homes that are now appraising for \$300,000 or less, yet it's likely that they now owe \$350,000 or more. Therefore, they will not qualify for refinancing under the President's plan.

Can they get a modification then under the President's plan? The best and most honest answer is: It's anybody's guess. Why? Because the plan is voluntary and if the bank concludes that it's going to lose more money doing the modification than going ahead with a foreclosure, they are not required to do the modification, even if they accepted bailout money from the government.

Let us attempt to explain this. Let's use the same example as above: \$300,000 home. \$350,000 mortgage balance.

The President's plan requires that the bank first reduce the interest rate on the mortgage as much as necessary (down to a floor of 2%), to try to get the monthly mortgage payment as close as possible to 38% of the homeowner's gross income. So, step one requires that the bank lose or forego part of the income that the interest rate on the mortgage would have brought.

Let's look at this in numbers. For instance:

Assume that the interest rate on the mortgage was:	6.25%
and the bank has to reduce it to:	- <u>3.00%</u>
the interest lost by the bank is:	3.25 percentage points.

That means that the bank will lose the income that it would have received from those additional 3.25 percentage points that it reduced to get the monthly payment down to 38% of the homeowner's gross income before it sees any government money.

Then here comes step 2. The bank has to continue lowering the interest rate in order to bring the monthly payment to the equivalent of 32% of the homeowner's gross income. Thus, in step 1 they lower the monthly mortgage payment to the equivalent of 38% and in step 2 they have to reduce it by another 6% to bring it down to 32% of the homeowner's gross income.

Complicated, right?

It's during this second step that the bank first sees any government money under the Plan. However, what the bank receives from the government is one half of the additional moneys that the bank loses by doing the modification.

Consequently, first, the bank has to lose whatever money the mortgage would bring at the existing interest rate in order to bring the monthly payment down to 38% of gross income. Then, the bank receives from the government 50% of any additional moneys the bank loses in the process of bringing the monthly payment down to 32% of gross income. Lastly, this reduced amount has to stay in place for 5 years.

To be fair, the bank receives additional monies from the government, such as \$1,000 for doing the modification and other similar small sums (when compared to the amounts lost). However, you do the math. Banks are just not going to do many loan modifications voluntarily here in South Florida because they are going to conclude that they will lose more money allowing the modification than foreclosing on the mortgage.

So, is there anything that homeowners can do? Yes! They can hire a lawyer to perform a forensic audit on their loan to see if there were any mistakes made by the bank when the loan was given, as this may give the homeowner a significant leverage in negotiating with the bank.

The reality is that only a lawyer can represent the homeowner in court and only a lawyer has the requisite training in the law to properly negotiate with the bank those issues that involve violations of federal and state banking and consumer laws.

In addition, lawyers whose practice involve litigation - such as ours - are substantially more experienced in negotiation and persuasion than those who only occasionally or seldom become involved in anything other than negotiating the terms of a real estate contract or in procuring a mortgage loan. Those are typically not controversial situations and the type of negotiation required is simply not the same.

For over 28 years our firm has been involved in all aspects of residential and commercial real estate, including litigation. We are agents for the largest title insurance underwriter in Florida, *Attorney's Title Insurance Fund*. We are insured and we are regulated by the Supreme Court of Florida through The

Florida Bar.

Unlike those many companies that have become popular of late - many of which have now been shut down by the authorities - we make no wild promises, as such would be absolute lies. Instead, we focus on analyzing our client's particular situation and in providing our clients with a meaningful, honest assessment of what we think we can achieve for them.

We charge a flat fee. There are no hidden costs or surprises.

If you think that you deserve to know your options with regard to the refinancing or the modification of your mortgage, then we invite you to call our office and make an appointment for a free consultation. Only then can you really know what your options are.

David. A. Donet, Esq. Copyright 2009.