

# NEGOTIATING LOAN MODIFICATIONS

A PUBLIC SERVICE & CONTINUING LEGAL EDUCATION PRESENTATION OF  
NHS OF CHICAGO, INC. & ATTORNEYS TITLE GUARANTY FUND, INC.

HOSTED BY

THE FEDERAL RESERVE BANK OF CHICAGO  
230 SOUTH LASALLE STREET, CHICAGO, IL 60604

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- I. Background on Securitization: The Players
  - II. Available Loss Mitigation Options
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TITLE  
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INC.

## I. BACKGROUND ON SECURITIZATION: THE PLAYERS

The traditional model of a local bank making a mortgage loan from deposits on hand and then paying off depositors over time as the homeowner makes his monthly payments is a vestige of the past. It is still done on a small scale at some community banks and credit unions, but the vast majority of mortgages are no longer handled this way in the United States.

Instead, virtually all mortgages are **securitized**. That is, the lending industry is divided into two markets: 1) the **primary market**; and 2) the **secondary market**. The primary market consists of loan originators who take loan applications from consumers, underwrite them, and fund and close them. Typical primary market actors are commercial banks, mortgage banks, mortgage companies, credit unions, and mortgage brokers.

Once a loan is closed, it is sold to investors, or the secondary market. The proceeds from the sale fund the primary market's new lending operations. Once sold, the loan is pooled along with thousands of others into a **mortgage backed security**, ("MBS"). Typical secondary market players are the **Government Sponsored Enterprises** ("GSE's") such as Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System. Additionally, there is a vast "private label" secondary market full of private, institutional investors such as investment banks, insurance companies, pension funds, and hedge funds.

For private label mortgage back securities, the pools of loans are divided into tranches of similar types of loans or risks. The incorporating documents of these MBS' are called **pooling and servicing agreements** ("PSA") that define the rights of each tranche holder as well as loss mitigation options available to any contained loan. In one particular MBS, for example, there may be an investor who only receives the interest payments on loans with credit scores over 700. Others only receive the principal repayment. Still others only receive the pre-payment penalty

fee on loans where the credit score was below 620. Finally, some investors only receive money if the mortgage is foreclosed upon and the house sold. On the loss mitigation side, the PSA might state that only 5% of the loans where the credit score is under 620 may be modified.

Obviously these investors have competing interests. To manage their interests, mortgage-backed securities employ a **trustee** to manage the affairs of the MBS. The two major trustees in the United States are Deutsche Bank and Bank of New York. The trustee's job is to maximize the value of the MBS as a whole. They do this by hiring a **servicing company** to manage the performance of the loans within the MBS. The servicer performs the following tasks:

1. Collects payments from borrowers
2. Pays escrowed items such as property taxes and insurance
3. Custodial accounting and disbursement of borrower payments to the trustee
4. Legal compliance
5. Loss mitigation and foreclosure on delinquent loans

In exchange for this work, the servicer deducts a fee of between 0.25% and 0.3% from the payments borrowers make every month. In the event of default, the servicer is allowed to charge the expenses of foreclosing to the trustee. Mortgage loan servicers are regulated by the U.S. Treasury Department's Office of the Comptroller of the Currency, ("OCC").

Major servicing companies include Countrywide, Wells Fargo, Saxon, Litton Loan Servicing, Chase, EMC, Select Portfolio Services, American Home Mortgage Servicing, and many others. Each of these servicers built their business model on an anticipated 1-2% delinquency rate and projected revenue based on most of the loans performing. Now that loan delinquency rates range from 15-48%, servicers are facing a two-fold problem: 1) they do not have staff to provide the high-touch work of getting loans performing again; and 2) they are losing a major portion of their revenue.

Even with GSE loans, Fannie Mae and Freddie Mac have set up guidelines on what loss mitigation options are available. These can sometimes be more or less restrictive than what private label MBS's offer. Also, they do not manage their own loans and employ servicing companies just like private label MBS's do.

Because the servicer is charged with managing loss mitigation and foreclosure on delinquent loans within an MBS, it is the servicer with whom you must negotiate. **Thus there are two layers of bureaucracy: the servicer is merely the agent for the decision-maker, the trustee, who, in turn, is an agent for the investors.** This can be particularly frustrating because the servicer will often reject a reasonable loan modification because it does not meet "investor guidelines" and one has no recourse to appeal to the investor directly.

***Thing to remember: the loan servicer is merely the agent for the investor and has no independent authority to offer a loan modification. The servicer will always have to run it by the investors before making a final offer.***

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## II. AVAILABLE LOSS MITIGATION OPTIONS

As shown above, it is the job of the servicer to manage loss mitigation and foreclosure on delinquent loans within an MBS. The options available are predetermined by the PSA at the time the MBS is created. Additionally, the trustee will create a more specific set of loss mitigation options based upon the current performance of the loans in the MBS.

Generally, however, the options are fairly standard and the terminology is universal across the loan servicing industry. Loss mitigation options fall into two categories: 1) **retention options**; and 2) **non-retention options**. Retention options are those in which the borrower is somehow brought back on track and keeps their home. Non-retention options are for borrowers who cannot be brought back on track and must exit the home but want to avoid the emotional and financial disaster of a completed foreclosure.

**A. Retention Options.** A pre-requisite to any retention option is that the hardship causing the delinquency has been cured or will be cured by the retention option. If, say, the homeowner has no income, then no retention option will be feasible over the long term. There are three main retention options: 1) repayment plan; 2) forbearance agreement; and 3) loan modification.

1. **Repayment Plan.** Repayment plans are increases in the monthly payment to cure an arrearage until the homeowner becomes current.
2. **Forbearance Agreement.** Forbearance agreements reduce or suspend monthly mortgage payments for a specific period of time. Once payments resume, the homeowner will go on a Repayment Plan to get caught up.
3. **Loan Modification.** Loan modifications create a temporary or permanent change to one of the essential terms of the loan. Loan modifications can change: 1) interest rate; 2) loan term; 3) payment due date; and 4) outstanding principal (either increase or decrease).

Some servicers will do a “**waterfall analysis**” in which they expect a homeowner to try a repayment plan first and if that does not work, attempt a loan modification. When exploring a modification, the servicer is limited by the trustee’s guidelines and the PSA on how low the interest rate can go, how long the loan modification can last, and whether principal can be reduced. A homeowner must stick to any retention option he agrees to. If he defaults on the plan, it will be that much harder convincing the servicer that he will not default on another plan. If a servicer cannot or will not offer any of these retention options to the homeowner, the alternatives are non-retention options.

**B. Non-Retention Options.** Non-retention options are for homeowners who do not qualify for the retention options. Ultimately they must lose the home but can do so without a foreclosure judgment on their credit and the humiliation of the sheriff evicting them. There are ~~three main non-retention options: 1) sale of the home; 2) short sale; and 3) deed-in-lieu of~~ foreclosure.

**1. Sale of the home.** The homeowner simply sells the home to someone, the proceeds of the sale pay off the mortgage. This preserves the homeowner's credit score and they may be able to recover some equity.

**2. Short Sale.** Where the homeowner cannot find a buyer willing to pay enough for the home to pay off the mortgage. The servicer may agree to accept the highest offer in full satisfaction of the debt. For 2009, any principal forgiven in this manner is not taxable income to the homeowner. This option has two pitfalls: 1) it requires trustee approval which can take 4-8 weeks once the offer is made by the potential buyer; some buyers are not willing to wait that long and 2) some servicers are including an IOU in their short sale paperwork in which the homeowner signs a new promissory note for any principal "forgiven."

**3. Deed-in-lieu of Foreclosure.** This option simply signs over title to the servicer in exchange for forgiveness of the mortgage debt. Some servicers are willing to offer money to homeowners for this. Typically it's called "**Cash for Keys**" or moving money.

A short sale or deed-in-lieu of foreclosure will hurt the homeowner's credit score but probably not as much as a completed foreclosure. Furthermore, down the road the homeowner can show potential new lenders that they were pro-active and worked with their lender when they were no longer able to pay their mortgage.

***Thing to remember: the option must make economic sense for the servicer but even when it should the servicer is also dealing with trustee and PSA restrictions***

*that might prevent a good result. Additionally, each PSA and trustee will have different rules at any given time. So a servicer might not be able to offer the same options to two similarly- situated homeowners.*

### III. ASSESSING A HOMEOWNER'S FINANCIAL SITUATION

In order to figure out what is type of option a homeowner might qualify for, one must do an economic analysis of the **household budget**. This requires preparing a detailed household budget that includes net income from all sources, utility and fixed expenses, car and fuel costs, food expenses, other debt payments such as credit cards, student loans, child support payments, and discretionary spending. For retention options, most servicers will expect to see a modest monthly budget surplus after the option is put into effect. In the event that the household budget does not support any retention option, the servicer will expect to pursue a non-retention option.

*Practitioner's Tip: Homeowners chronically underestimate their household budgets. Knowing what the homeowner can actually afford to pay is crucial to the success of any retention option. Require the homeowner to bring in all their bills so you can verify that the budget is accurate.*

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Of the last 1,000 homeowners who have called NHS of Chicago, they break down into 4 main groups based on household budget. These groups are illustrative of what you might expect.

**A. Group A Sustainable Loans with a life event.** These homeowners have good income but have had a temporary set back such as a medical expense, job loss, or underemployment but are now back on track. They need help dealing with the months of mortgage payments they have missed but could pay moving forward. They represent only 13% of the households that call NHS. Their household budgets typically look like this:

Net Income:	\$4,789.45
Mortgage Payment (PITI)	\$1,305.79
Credit Card Payments	\$144.62
Student Loans	\$97.40
Car Loans	\$404.47

Medical Bills	\$64.83	
Utilities	\$356.82	
Flexible Spending	<u>\$1,118.60</u>	
Total	<b>\$3,598.89</b>	<b>\$4,789.45 = 75% Debt Ratio</b>

For homeowners in this group, there is sufficient "surplus" income for them to enter into a repayment plan with the servicer. Furthermore, their mortgage payment is only 27% of their net monthly income. Most likely, the servicer will not even consider any other option.

**B. Group B, Marginal loans with compounding factors.** These households have reasonable monthly net income, however, their mortgage payment represents at least 50% of their net income and they are struggling to remain current. Also, they do not have the income to afford a repayment plan. In order to stay current, the homeowner needs a reduction in their monthly mortgage payment. This can be achieved through a loan modification that reduces their interest rate to around 6% or less. They represent only 20% of the households that call NHS.

Their household budgets typically look like this:

Net Income:		<b>\$3624.01</b>
Mortgage Payment (PITI)	\$1826.07	
Credit Card Payments	\$117.04	
Student Loans	\$41.86	
Car Loans	\$285.70	
Medical Bills	\$74.53	
Utilities	\$302.92	
Flexible Spending	<u>\$958.76</u>	
Total	<b>\$3606.89</b>	<b>\$3624.01 = 99% Debt Ratio</b>

For homeowners in this group, a loan modification could reduce their monthly mortgage payment by several hundred dollars providing them with the necessary monthly surplus the servicer is looking for.

**C. Group C: Unaffordable Loans.** These households have unaffordable mortgages due either to an increase in interest rate or decrease in household income. The mortgage payment eats up about 78% of the entire net monthly income. They also have other outstanding debts that cause the household budget to be in the red. Total household debts hover around 131% of net income. For these homeowners a repayment plan is out of the question and a mere loan modification will not make the payment sustainable over time. To be sustainable, they need loan modification which provides a combination of a lower interest rate and approximately 20% principal reduction. If the servicer is unwilling to offer such a loan modification, then non-retention options are the only avenue left. These homeowners represent 14% of the households that call NHS. Their household budgets are quite dire and typically look like this:

Net Income:		<b>\$3091.51</b>
Mortgage Payment (PITI)	\$2409.22	
Credit Card Payments	\$132.31	
Student Loans	\$66.00	
Car Loans	\$237.84	
Medical Bills	\$55.64	
Utilities	\$317.45	
Flexible Spending	<u>\$846.53</u>	
Total	<b>\$4064.98</b>	<b>\$3091.51 = 131% Debt Ratio</b>

**D. Group D: Unsustainable Loans.** Unless they can quadruple their incomes, these households have no serious hope of securing a retention option. Their best course of action is to pursue a sale, short sale, or deed-in-lieu of foreclosure as soon as possible. Their average mortgage payment is 100% of their net monthly income. Their other debts are also crushing the household budget. Their average total debt ratio is 170% of net income. What they would need to be sustainable is a reduction of the interest rate to 0% and forgiving over 20% of the principal balance. Currently, very few, if any, servicers are offering such loan modifications. However,

since the mortgage payment is usually so high, they stand a good chance of being successful renters if they can find an apartment for under \$1,000 per month. Unfortunately, they represent 53% of the households that call NHS. Their household budgets typically look like this:

Net Income:		<b>\$2171.12</b>	
Mortgage Payment (PITI)	\$2190.14		
Credit Card Payments	\$145.86		
Student Loans	\$28.35		
Car Loans	\$200.47		
Medical Bills	\$43.53		
Utilities	\$306.46		
Flexible Spending	<u>\$762.50</u>		
Total	\$3677.30	\$2171.12 = 170% Debt Ratio	

Once you have assessed a homeowner's financial situation and plotted them against the main retention and non-retention options, you are ready to begin speaking to the servicer about pursuing the best option.

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***Practitioner's Tip: For homeowners who bought new construction or conversion condos or other properties where the land use changed, their property taxes go up dramatically after a year or two of ownership. If the servicer escrows the property tax payment, the servicer will pay the increased property taxes and send the homeowner a bill stating that they have an escrow delinquency due immediately and a notice that they must also escrow more money per month to cover the next tax bill. Try negotiating with the servicer to extend the repayment of the escrow over a longer term, such as a year or six months.***

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#### IV. NEGOTIATING WITH THE SERVICER

Loan servicers handle their loans through three main branches: 1) **customer service**, which handles current loans; 2) **collections**, which handle loans between 1 and 90 days delinquent; and 3) **loss mitigation**, which handles loans after 90 days delinquency all the way through to foreclosure.<sup>1</sup> Depending on where the homeowner is in the foreclosure process, one of these departments will have the file. Each department will also treat the homeowner differently. Customer service is polite and courteous. The collections department behaves like any other collection agency. Loss mitigation is supposed to cooperate with the homeowner to find a reasonable solution. This is not always the case, however, as servicers have had to hire additional loss mitigation staff to deal with the current crisis. They often pull their collections employees into loss mitigation. Thus, they bring to loss mitigation the bullying attitude they developed in collections.

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*Practitioner's Tip: These three departments often do not communicate with each other effectively. Thus, you may be negotiating something with the loss mitigation department while the homeowner is still receiving bullying phone calls from the collections department.*

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You can reach out to the servicer in several different ways. You can call the 1-800 number on the homeowner's monthly mortgage statement. If you do, you will be transferred to the front-line staff of one of the above-departments and have to wait your turn. It can take up to an hour of being on hold to get through to someone. You can also use a dedicated contact at the servicer (see Appendix) to reach someone more qualified or a supervisor if you are having trouble getting through.

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<sup>1</sup> There is a fourth department which manages property post-foreclosure. This is called the Real Estate Owned ("REO") Department.

***Practitioner's Tip: You may be bounced around from person to person every time you call, so make sure you keep records on who you spoke to, the date, and what they told you. Even better is to follow up each conversation with an email, letter, or fax confirming the substance of your conversation.***

Once you get through to the servicer, they will instruct you to fax or mail an **authorization or letter of representation** so they can speak to you about the borrower's loan. Most will accept a form authorization you draft. Some have their own forms that they will require you to have the homeowner sign. Once the authorization or letter of representation is received, the servicer will speak to you. This process can be daunting. Servicers take, on average, two weeks to acknowledge receipt of the authorization. In many other cases, the servicer will deny receiving the fax or letter explaining that it was sent to the wrong fax number or address.

Once the authorization is received and acknowledged by the servicer, your next step will be to fill out a **financial packet**. Typically it is a 3-5 page form that gathers information on the homeowner's **income, assets, household budget, and reason for delinquency**. The homeowner must also submit supporting documentation such as **pay stubs, bank statements, proof of homeowner's insurance, and a hardship letter**. Each servicer has its own form for this worksheet and most are available on-line. (see Appendix for a sample form). Once the packet is complete, you can forward it to the servicer. Incomplete packets will delay processing until all documents are received.

When preparing a budget with the homeowner, look at ways he/she can trim unnecessary expenses such as cable, internet service, cell phones, dining out. The servicer will see these expenses on the budget and expect the homeowner to make some sacrifices of his own. If you cannot show that keeping the home is a priority to the homeowner, you may have a difficult time negotiating a reasonable option.

Once the financial packet is received by the servicer, expect to wait a few weeks for a decision. Some servicers can take months to reach a decision. Others can act more quickly. In due time the servicer will propose an option. Many servicers will ignore your authorization or letter of representation and direct all of their outgoing communication to the homeowner. Expect to receive a call from the homeowner stating that the servicer just called them or sent them a form. The option may not be the one you are looking for and you may need to negotiate a better deal for the homeowner.

***Practitioner's Tip: Do not expect a good initial offer from the servicer. Their job is to keep the payment as close to the loan terms as possible. Also, if the homeowner does not qualify for a retention option, the servicer might simply cut off communication and not introduce non-retention options. You may have to bring those up yourself.***

**Do the math** on the option presented by the servicer. The track record of servicers is not good when it comes to loan modifications. In November 2008, 68% of loan modifications actually *increased* the homeowner's monthly payment. The reason for this is that the modification was nothing more than a freezing of the interest rate, capitalization of the current arrearage (unpaid interest, late fees, attorney fees, etc.), and recalculation of the mortgage payment based upon the higher principal balance. In those cases, the homeowner is actually worse off than before and has an even larger principal balance. As part of negotiating, you can push back and explain to the servicer that the option is not sustainable.

When negotiating, remember that servicers do not know what is going on in your community and you have the chance to enlighten them on real estate values and the job market. They base the option they offer the homeowner on the capacity to repay and the risk of loss in the event of foreclosure. Thus, substantial negative equity works in the homeowner's favor. The servicer probably thinks the home is still worth the full loan amount or more. This is simply not

true. The average loss on a foreclosure in November 2008 was 57% of the loan amount. In other words, in the event of a complete foreclosure on a \$200,000 mortgage, servicers can expect to recover about \$86,000. You might want to submit a new appraisal or comparative market ~~analysis to the servicer to show that their risk of loss if they do not offer a loan modification is~~ substantially greater than they realized. Alternatively, ask them to do a drive-by appraisal, called a **Broker's Price Opinion ("BPO")** to see for themselves how little the house is worth.

If you continue to have problems getting a reasonable option on the table, consider escalating the case to a supervisor. Oftentimes the front-line staff is overwhelmed or inexperienced and will ignore difficult cases. A supervisor can help push a case through. Additionally, new programs appear to befuddle front-line staff. When the senior level managers of the servicers make public announcements about new programs, that knowledge may not trickle down to the front-line staff for many weeks. For example, many servicer front-line staff are still not aware of President Obama's new program even though it was announced on March 4, 2009.

Finally, remember that the foreclosure timeline in Illinois takes between 13-15 months from first missed payment to eviction. As time goes on, the servicer might become more desperate and offer a better solution. And, the homeowner may find additional income that would support a better option.

***Practitioner's Tip: Advise the homeowner to save what they would have paid on their mortgage. If a deal is reached, they will need the funds as a down payment on their retention option.***

## V. CLOSING THE DEAL

Once you have worked out a sustainable solution with the servicer, your client will be called upon to execute an agreement memorializing its terms. The appendix contains several

samples including a repayment plan, loan modification agreement, and deed-in-lieu of foreclosure. Review these documents closely as they often contain boilerplate that could harm the homeowner's interests. First, they usually recite an arrearage amount that might not be accurate. Double check that the amount the servicer claims is outstanding is correct. Second, they often contain a waiver and release of any and all claims against the servicer, investor, trustee, and anyone involved in the origination of the loan.

Most agreements must be executed by the homeowner and notarized within a certain amount of time. Check the deadlines to make sure the document is not returned late. Return the documents via Federal Express or some other assured means of delivery. Some servicers will not extend the offer past the deadline. Also, some agreements require a down payment from the homeowner. Before agreeing to the option, ensure that the homeowner has funds available to make the payment.

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Once the agreement is in place, the homeowner must comply with the terms. Depending on the option presented to the homeowner, the servicer may continue to report them late to the credit bureaus. Find out from the servicer how they will treat the account during the repayment plan, forbearance, or loan modification period.

## **VI. PRESIDENT OBAMA'S PLAN**

Announced on March 4, 2009, President Obama's "**Home Affordable Modification Plan**" creates consistent loan modification guidelines so that one knows what to expect from the servicer. In essence, the plan is a federal subsidy payment to loan servicers in exchange for a reduction in monthly mortgage payment. The plan is open to any loan regardless of who owns it. Most loan servicers have announced that they will participate to some degree in the plan. The

only exception is FHA and VA insured loans. Federal law will soon be changed to allow these loans to qualify for the plan.

**Only certain properties and loans qualify:**

1. Must be owner-occupied, 1-4 unit properties with balances no greater than: \$729,750, \$934,200, \$1,129,250, and \$1,403,400, respectively.
2. Mortgage was originated before January 1, 2009
3. Applies to single family, condo, co-op, town homes, and manufactured homes; and
4. Does not matter how delinquent the homeowner is or how much negative equity they have.

If a homeowner qualifies, the analysis the servicer goes through is fairly simple. First, calculate 31% of gross monthly income for all borrowers on the loan. Second, try to lower the mortgage payment (**PITIA = Principal, Interest, Taxes, Insurance, and Condo Assessments**)

on the first mortgage to this 31% number. The servicer can do this in three steps: 1) reducing the interest rate to as low as 2%; 2) extending the loan term to 40 years; and 3) reducing or deferring some portion of the principal.

To calculate what the homeowner's monthly mortgage payment would be at 2%, you can use a business calculator, website, or simply take the outstanding principal balance, divide by 1,000, and then multiply that by 3.7.

$$\text{Principal balance} / 1,000 \times 3.7 = \text{mortgage payment at 2\% interest}$$

Subtract the tax escrow, insurance payment, and assessments from 31% of the homeowner's gross monthly income. If the remainder is equal to or greater than the 2% monthly interest

payment, the homeowner should qualify without an extension of the loan's term or principal reduction.

Before reducing principal, the servicer will do a net present value analysis of the loan to determine if it is more cost effective to forgive principal or to foreclose. This does not mean the homeowner is automatically entitled to a 2% interest rate. Rather, whatever interest rate is necessary to achieve a 31% of gross monthly income ratio is what will be used. If a homeowner has a second mortgage, they must pay that as usual without any federal assistance.

The modification will be in place for five years. The servicer will be paid \$1,00.00 for entering into the loan modification with the homeowner. The monthly mortgage payment will be subsidized by the Treasury. They will also receive "pay for success" fees which will be awarded monthly as long as the homeowner stays current – up to \$1,000 for 3 years. If the homeowner remains current for five years, he will receive a principal reduction payment of \$5,000 from the Treasury. At the end of the five years, the interest rate can increase 1% per year until it caps out at the prime rate at the time the homeowner received the modification. (i.e., today's rate would be 4.7%).

If a homeowner qualifies for the plan, the servicer will then calculate their "back end" ratio, which is the percentage of mortgage payments, other credit report debt divided over gross monthly income. If that ratio is over 55%, the homeowner still qualifies, but must sign an agreement to seek and undergo credit and budget counseling with a HUD-Certified housing counseling agency.

In some cases the homeowner will not have sufficient income or negative equity to make President Obama's plan work. There is \$1.5 Billion in moving money for such homeowners. The details of how this money can be accessed have not been released. If a servicer or trustee

declines to participate in the Plan, President Obama is pursuing changes to the Bankruptcy Code that would enable homeowners to restructure their mortgages in Chapter 13. Specifically, judges would have the power to reduce interest rates and write off negative equity for an otherwise qualified borrowers whose servicer refused to make a reasonable loan modification offer. The bill has passed the House of Representatives and is moving through the Senate for a vote later this month or in early May.

About NHS of Chicago:

**Neighborhood Housing Services of Chicago** is a nonprofit housing, counseling, and lending organization committed to offering individuals in Chicago and Elgin affordable resources so they can buy, fix, and keep their homes. Our mission is to create opportunities for people to live in affordable homes, improve their lives, and strengthen their neighborhoods. Since 1975, NHS of Chicago has served 175,000 families, loaned more than \$457 million, created 3,128 new homebuyers, educated 25,472 individuals, and financed, built or rehabbed 26,923 homes. For more information about NHS of Chicago, our free foreclosure prevention workshops, or other programs and services, call 773-329-4185 (English), 773-329-4181 (Spanish), or visit [www.nhschicago.org](http://www.nhschicago.org).

About the presenter:

*Michael W. van Zalingen* has served as the Director of Homeownership Services for the non-profit Neighborhood Housing Services of Chicago, Inc. since May 2005. He has a forthcoming article to be published in Northwestern University Law School's Journal of Law and Social Policy this summer on the threat foreclosure poses to asset building in the low- to moderate-income community. He is a Certified Housing Counselor who has successfully completed NeighborWorks America's Train the Trainer Homeownership Counseling program. He has given presentations to Standard & Poors, U.S. Congressman Danny K. Davis, the Illinois Senate Housing Subcommittee, and the Illinois Mortgage Bankers Association. His views on the housing and mortgage markets have been quoted in numerous publications such as *The Wall Street Journal*, the *Chicago Tribune*, *Reuters*, and *Le Monde*. Michael graduated from the University of Alabama with a B.A. in Philosophy in 1993 and received his J.D., *cum laude*, from Valparaiso University in 1998, where he was an Associate Editor for the Valparaiso University Law Review. He holds a Certificate in the Liberal Arts from the University of Chicago.

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# Appendix and Useful Information

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Comptroller of the Currency  
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US Department of the Treasury

Answers for customers of  
national banks at  
**HelpWithMyBank.gov**

## Consumer Advisory

# OCC Consumer Tips for Avoiding Mortgage Modification Scams and Foreclosure Rescue Scams

Scams that promise to “rescue” you from foreclosure are popping up at an alarming rate nationwide, and you need to protect yourself and your home.

If you're falling behind on your mortgage, others may know it, too — including con artists and scam artists. They know that people in these situations are vulnerable and often desperate. Potential victims are easy to find: mortgage lenders publish notices before foreclosing on homes. Private firms frequently compile and sell lists of these foreclosed properties and distressed borrowers. After reading these notices, con artists approach their targets in person, by mail, over the telephone, or by e-mail. They often advertise their services on television, radio, or the Web, and in newspapers, describing themselves as “foreclosure consultants” or “mortgage consultants,” offering “foreclosure prevention” or “foreclosure rescue” services. And they are only too happy to take advantage of homeowners who want to save their homes.

If someone offers to negotiate a loan modification for you or to stop or delay foreclosure for a fee, carefully check his or her credentials, reputation, and experience, watch out for warning signs of a scam, and always maintain personal contact with your lender and mortgage servicer. Your mortgage lender can help you find real options to avoid foreclosure. It is important to contact your mortgage lender early to preserve all your options. There are legitimate consumer financial counseling agencies that can help you work with your lender.

This Consumer Advisory, issued by the Office of the Comptroller of the Currency (OCC), describes common scams, suggests ways to protect yourself, provides information on U.S. government loan programs and counseling resources, and lists 10 warning signs of a mortgage modification scam.

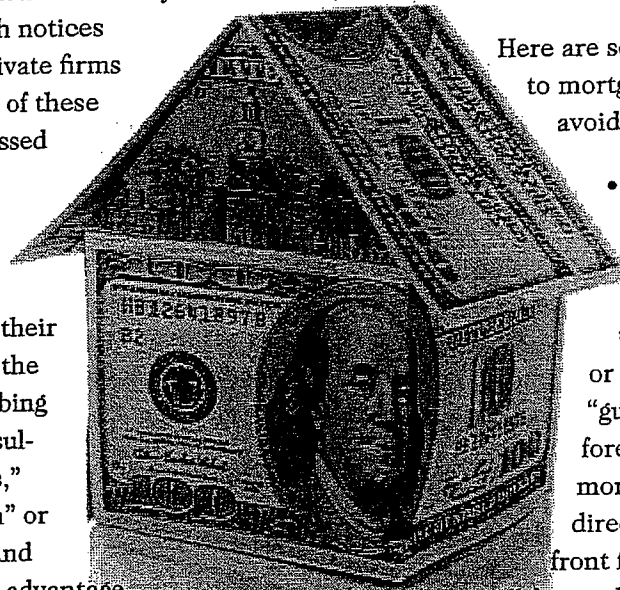
### Common Types of Scams

Here are some examples of scams related to mortgage modification and foreclosure avoidance.

- **Foreclosure “rescue” and refinance fraud.** The scam artist offers to act as an intermediary between you and your lender to negotiate a repayment plan or loan modification and may even “guarantee” to save your home from foreclosure. You may be told to make mortgage payments to the scammer directly — along with significant, up-front fees — and be told that the scammer will forward the payments to your lender. In reality, the scammer may pocket your money and leave you in worse shape on your loan. The scam artist also may tell you to stop making payments or stop communicating with your lender. Don't follow that advice.

Remember that your mortgage lender should be the starting point for finding options to avoid foreclosure. You also should consider contacting qualified and approved credit counselors.

- **Fake “government” modification programs.** Unscrupulous people may claim to be affiliated with, or approved by, the government or may ask you to pay high up-front fees to qualify for government



mortgage modification programs. While government-supported mortgage modification and refinancing

Always maintain personal contact with your lender and mortgage servicer.

initiatives are legitimate, the scam artists' claims are not. Keep in mind that you do not have to pay to benefit from these government programs. All you need to do is contact your lender or loan servicer.

The scam artist's name or Web site may be very similar to those of government agencies. The scam artist may use such terms as "federal," "TARP," or other words or acronyms related to official U.S. government programs. These tactics are designed to fool you into thinking the scam artist is somehow approved by, or affiliated with, the government. The government is taking actions to stop this fraud, but you also need to protect yourself. So be wary of claims offering "government-approved" or "official government" loan modifications. Your lender will be able to tell you whether you qualify for any government initiatives to prevent foreclosure. You do not have to pay anyone to benefit from them.

- **Leaseback/rent-to-buy schemes.** In this type of scam, you are asked to transfer the title to your home to the scammer, who will, supposedly, obtain new and better financing and/or allow you to remain in the home as a renter and eventually buy it back. If you do not comply with the terms of the rent-to-buy agreement, you will lose your money and face eviction. The agreement may be very hard to comply with, because it may require, for instance, high up-front and monthly payments that you may not be able to afford. In fact, the scammers may have no intention of ever selling the home back to you. They simply want your home and your money.

Remember that transferring your title does not change your payment obligations — you will still owe your mortgage debt. The difference will be that you will no longer own your home. If payments are not made on the mortgage, your lender has the right to foreclose, and the foreclosure and any other problems will appear on your credit report.

- **Bankruptcy scams.** You may have heard that filing bankruptcy will stop a foreclosure. This is true — but only temporarily. Filing bankruptcy brings an "automatic stay" into effect that stops any collection and foreclosure while the bankruptcy court administers the case. Eventually, you must start paying your mortgage lender, or the lender will be able to foreclose. Bankruptcy is rarely, if ever, a permanent solution to prevent foreclosure. In addition, bankruptcy will negatively impact your credit score and will remain on your credit report for 10 years.
- **Debt-elimination schemes.** Scammers may claim to be able to "eliminate" your debt by making illegitimate legal arguments that you are not obligated to pay back your mortgage. These scammers will provide you with inaccurate claims about applicable laws and finance, such as that "secret laws" can be used to eliminate debt or that banks do not have the authority to lend money. Do not stop making payments on your mortgage based on their claims.

### How to Protect Yourself from Mortgage Modification and Foreclosure Avoidance Scams

Always proceed with caution when dealing with anyone offering to help you modify your mortgage or avoid foreclosure. Remember that you do not *need* a third party to work with your lender — any such party should make the process easier, not harder and more expensive.

- **Contact your lender or mortgage servicer first.** Speak with someone in the loss mitigation department for mortgage modification options and other alternatives to foreclosure.
- **Make all mortgage payments directly to your lender or to the mortgage servicer.** Do not trust anyone

Always proceed with caution when dealing with anyone offering to help you modify your mortgage or avoid foreclosure.

to make mortgage payments for you, and do not stop making your payments.

- **Avoid paying up-front fees.** While some legitimate housing counselors will charge small fees for their services, do not pay fees to anyone before receiving any services. Make sure you are dealing with a legitimate organization.
- **Know what you are signing.** Read and understand every document you sign. Do not rely on an oral explanation of a document you are signing — make sure that you read and understand what the document actually says. Otherwise, a document may obligate you to terms you don't want or may even convey ownership of your home to someone else. Never sign documents with blank spaces that can be filled in later. Never sign a document that contains errors or false statements, even if someone promises to correct them. If a document is too complex to understand, seek advice from a lawyer you trust or a legitimate, trusted financial counselor.
- **Do not sign over your deed without consulting a lawyer you select.** Foreclosure scams often involve transfer of ownership of your home to a con artist or another third party. Never agree to this without getting the advice of your own lawyer, financial advisor, credit counselor, or other independent person you know you can trust. By signing over your deed, you lose the rights to your home and any equity built up in the home — and you are still obligated to pay the mortgage.
- **Get promises in writing.** Oral promises and agreements relating to your home are usually not legally binding. Protect your rights with a written document or contract signed by the person making the promise. Keep copies of all contracts that you sign. Again, never sign anything you don't understand.
- **Report suspicious activity to relevant federal agencies, such as the Federal Trade Commission, and to your state and local consumer protection agencies.** Reporting con artists and suspicious schemes helps prevent others from becoming victims. If your complaint or question involves a national bank and you cannot resolve it directly with the bank, contact the OCC's Customer Assistance Group

by calling (800) 613-6743, by sending an e-mail to [customer.assistance@occ.treas.gov](mailto:customer.assistance@occ.treas.gov), or by visiting [www.HelpWithMyBank.gov](http://www.HelpWithMyBank.gov).

- **Contact a legitimate housing or financial counselor to help you work through your problems.**
  - To find a counselor, contact the U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or (877) 483-1515, or go to [www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm](http://www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm).
  - Call (888) 995-HOPE, the Homeowner's HOPE Hotline to reach a nonprofit, HUD-approved counselor through HOPE NOW, a cooperative effort of mortgage counselors and lenders to assist homeowners.
  - Visit NeighborWorks America's Web site at [www.nw.org/network/home.asp](http://www.nw.org/network/home.asp).
- **Visit the following Web sites for further information:**
  - The OCC's consumer information site for banking-related questions: [www.HelpWithMyBank.gov](http://www.HelpWithMyBank.gov).
  - OCC Customer Assistance Group and consumer assistance site: [www.occ.gov/customer.htm](http://www.occ.gov/customer.htm).
  - Federal Trade Commission: [www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm).
  - Federal Reserve Board: <http://www.federalreserve.gov/pubs/foreclosurescamtips/default.htm>.
  - NeighborWorks America: [www.nw.org](http://www.nw.org).
  - HOPE NOW: [www.hopenow.com](http://www.hopenow.com).
- **Apply for a government-sponsored loan modification or refinancing.** The U.S. government has developed a major loan modification and refinancing program to help homeowners find affordable loans and to save their homes.
  - Go to this Web site for information on these federal mortgage modification and refinancing programs: [www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov).

## Ten Warning Signs of a Mortgage Modification Scam

**“Pay us \$1,000, and we’ll save your home.”**

- 1** Some legitimate housing counselors may charge small fees, but fees that amount to thousands of dollars are likely a sign of potential fraud — especially if they are charged up-front, before the “counselor” has done any work for you. Be wary of companies that require you to provide a cashier’s check or wire transfer before they take any action on your behalf.

**“I guarantee I will save your home – trust me.”**

- 2** Beware of guarantees that a person or company can stop foreclosure and allow you to remain in your house. Unrealistic promises are a sign that the person making them will not consider your particular circumstances and is unlikely to provide services that will actually help you.

**“Sign over your home, and we’ll let you stay in it.”**

- 3** Be very suspicious if someone offers to pay your mortgage and rent your home back to you in exchange for transferring title to your home. Signing over the deed to another person gives that person the power to evict you, raise your rent, or sell the house. Although you will no longer own your home, you still will be legally responsible for paying the mortgage on it.

**“Stop paying your mortgage.”**

- 4** Do not trust anyone who tells you to stop making payments to your lender and servicer, even if that person says it will be done for you.

**“If your lender calls, don’t talk to them.”**

- 5** Your lender should be your first point of contact for negotiating a repayment plan, modification, or short sale. It is vital to your interests to stay in close communication with your lender and servicer, so they understand your circumstances.

**“Your lender never had the legal authority to make a loan.”**

- 6** Do not listen to anyone who claims that “secret laws” or “secret information” will be used to eliminate your debt and have your mortgage contract declared invalid. These scammers use sham legal arguments to claim that you are not obligated to pay your mortgage. These arguments don’t work.

**“Just sign this now; we’ll fill in the blanks later.”**

- 7** Take the time to read and understand anything you sign. Never let anyone else fill out paperwork for you. Don’t let anyone pressure you into signing anything that you don’t agree with or understand.

**“Call 1-800-Fed-Loan.”**

- 8** This may be a scam. Some companies trick borrowers into believing that they are affiliated with or are approved by the government or tell you that you must pay them high fees to qualify for government loan modification programs. Keep in mind that you do not have to pay to participate in legitimate government programs. All you need to do is contact your lender to find out if you qualify.

**“File for bankruptcy and keep your home.”**

- 9** Filing bankruptcy only temporarily stops foreclosure. If your mortgage payments are not made, the bankruptcy court will eventually allow your lender to foreclose on your home. Be aware that some scammers will file bankruptcy in your name, without your knowledge, to temporarily stop foreclosure and make it seem as though they have negotiated a new payment agreement with your lender.

**“Why haven’t you replied to our offer? Do you want to live on the streets?”**

- 10** High-pressure tactics signal trouble. If someone continually contacts you and pressures you to work with them to stop foreclosure, do not work with that person. Legitimate housing counselors do not conduct business that way.

# Foreclosure Counselor Online (Beta)

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## Servicers

From Public Forum

### Fannie and Freddie Extend Foreclosure Sale and Eviction Suspensions

Submitted by Alex Sasayama on January 9, 2009 - 3:38pm.

#### Fannie Mae Extends Foreclosure Sale and Eviction Suspension

WASHINGTON, DC -- Fannie Mae (FNM/NYSE) today announced that it would extend the suspension of foreclosure sales and evictions from single-family properties through January 31, 2009.

» 1 comment | 1 new comment

#### Previous Posts

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- urgent
- First Federal Bank of California
- GMAC
- no workouts offered - help
- modifications - successful - when and why
- National City Mortgage

#### Contact Information for Servicers

Below is a table of contact information for servicers. It is a compilation of information provided by the HOPE NOW Alliance and the friendly folks at Community HousingWorks in San Diego.

For the purpose of serving the greater good, please provide any additions and corrections to this table by sending a note via the link at the bottom of the page (to Alex Sasayama) or send an email directly to Alex Sasayama. Let's help each other out.

Note: Eventually, there will be an interactive database where you will be able to directly add/correct contact information for servicers. In the meantime, the table below will be updated as often as possible.

Company	Department	Contact	Phone	Fax	Email
Acqura Loan Services	Customer Service		866-660-5408	972-644-3356	tesparza@srg-i.com
	Loss Mitigation		866-660-5804 ext.2031	972-644-3356	kdouglas@srg-i.com
	HOPE NOW Inquires		972-715-1035	972-644-3356	kdouglas@srg-i.com
	For Counselors ONLY	Kasey Misch	972-715-1020	972-644-3356	kmisch@srg-i.com
American Home Mtg Ser			877-304-3100	949-790-8505 Authorization	

RRR 452-1837