



MBA Summary of “Helping Families Save their Homes in Bankruptcy Act”

February 24, 2009

Title I – Prevention of Mortgage Foreclosures

Section 101. Eligibility for Relief

- Excludes certain home mortgage debt from being counted in calculating a debtor’s eligibility to file in Chapter 13, making it available to certain high income/high debt individuals who would otherwise be required to file in Chapter 11.
- Waives the standard credit counseling requirement for consumer debtors for any debtor who submits a certification that they have received a notice that the claim holder of the principal mortgage debt may commence a foreclosure.

Section 102. Prohibiting Claims arising from violations of TILA

- Bars a lender’s claim to recover the unpaid principal balance when a borrower has a remedy of rescission for noncompliance with a provision of the Truth in Lending Act (TILA), notwithstanding prior entry of a foreclosure judgment.
- TILA rescission rights only apply to mortgage refinancing and home equity loans; but not to original purchase money mortgages, so this provision would not affect purchase money mortgages.
- Extinguishes the loan holder’s claim, thereby giving the borrower the home absent any payments (unrecognized mortgage claim is discharged in bankruptcy).
- Under TILA, an understatement of the total financing costs over the entire mortgage term of more than \$35 can give rise to a right of rescission for a bankrupt debtor. By way of contrast, under TILA the right of rescission gives the debtor the right to recover his payments and fees, while the lender is entitled to receive back the entire loan amount; its purpose is to restore both debtor and creditor to the position they held prior to entering into the transaction.

Section 103. Authority to Modify Certain Mortgages

- Lifts the ban against judicial modification of the terms of a loan secured only by a debtor’s principal residence for any residence that is the subject of a notice that foreclosure may be commenced, allowing the court to modify the rights of holders against a debtor who has filed in Chapter 13 through a cramdown of a portion of the amount owing (the loan amount in excess of the present value of the loan, as determined by the court, would become unsecured debt) by:
 - Extending the repayment term to up to 40 years minus the period for which the loan had been outstanding, regardless of the original or remaining term on the loan;
 - Fixing the interest rate at the most recent prime rate plus a “reasonable premium for risk” to be determined by the court; or

- Prohibiting, reducing or delaying any adjustment to the mortgage interest rate provided for in the mortgage instrument.
- Applies to all loans secured by a principal residence originated before the effective date of the legislation.
- That portion of the loan subject to cramdown would be converted to unsecured debt and would be paid out at a reduced percentage over the three to five year term of the Chapter 13 repayment plan.
- “Claw back” or “shared appreciation” – Debtor sale of the primary residence during the course of the Chapter 13 plan requires the claim holder to receive a portion of the net proceeds as a condition of the debtor receiving his bankruptcy discharge. There is no appreciation sharing in the event of a refinance on an appreciated property.
 - The claim holder’s recovery is graduated downward:
 - 80 percent of the difference between the sales price and the amount of the remaining secured claim (plus costs of sale and improvements), up to the amount of the reduction in the secured claim, if the home is sold during the first year of the plan;
 - 60 percent in the second year;
 - 40 percent in the third year; and
 - 20 percent in the fourth year;
 - No provision requiring any sharing in the fifth and final year of the plan.
- No requirement for sharing of appreciation after the debtor’s discharge from bankruptcy.
- Eligibility to Modify – Requires the debtor to certify that he attempted to contact the claim holder to obtain a loan modification at least 15 days prior to filing for bankruptcy, or that a foreclosure sale is scheduled to occur within 30 days of the filing, for any case commenced within 15 days after the bill’s date of enactment, in order to get a judicial modification on the primary residence.
- In all other cases the debtor must certify that he attempted to contact the claim holder within 15 days prior to filing for bankruptcy or seeking a judicial modification of an already existent Chapter 13 plan.

Section 104. Combating Excessive Fees

- Adds a new section to the Code to prohibit any fee, expense or charge arising during the pendency of a bankruptcy case from being added during or after the case, in regard to any debt secured by a principal residence, unless the holder of the claim files with the court, at least annually, notice of such amount due.
- The debtor would only be liable if the fee, expense or charge was lawful, provided for by the loan document, and found by the bankruptcy court to be “reasonable.”
- Failure to give the required notice would constitute a waiver of the amounts due, and any attempt to collect them would constitute a violation of the Code. It also provides that a Chapter 13 plan waive any prepayment penalty on a claim secured by the debtor’s principal residence.

Section 105. Confirmation of Plan

- The holder of a modified mortgage claim retains their lien until the later of the payment of their allowed secured claim or discharge of the debtor upon completion of the Chapter 13 plan. It requires the court to find that a modification of a mortgage loan was in good faith; and that the debtor did not obtain the mortgage extension, renewal or refinancing through misrepresentation, false pretenses, or actual fraud.

Section 106. Discharge

- Clarifies that the debtor need not complete all payments on a modified mortgage to receive a discharge from bankruptcy, and excludes the allowed secured debt resulting from the mortgage modification from being one of the debts discharged at the conclusion of the case.
- This allows the debtor to receive a Chapter 13 discharge notwithstanding the amounts still due on the modified mortgage, while preserving the debtor's obligation to make such payments following the grant of the bankruptcy discharge.

Section 107. Standing Trustee Fees

- A 4 percent fee for trustees is allowed, unless the bankruptcy court waives all fees upon a determination that the individual's income is less than 150 percent of the income official poverty line.

Section 108. Effective Date

- Effective upon enactment.

Section 121. Modification of Loans Guaranteed by VA

- Allows for payment of the unpaid balance of the loan obligation to the holder of the loan upon assignment, transfer and delivery of the loan to the Secretary.

Section 122. Payment of FHA Mortgage Insurance Benefits

- Secretary may pay insurance benefits as follows for a modification in bankruptcy:
 - Full payment for secured claim upon assignment, transfer and delivery.
 - Partial Payment for unsecured claim under the mortgage upon assignment of any unsecured claim.
 - Insurance benefits to be paid periodically or in one- time sum for interest payments that are reduced, upon assignment.
- Secretary to establish loan modification program to encourage eligible delinquent mortgages to be modified through payment of insurance benefits and assignment of the mortgage.
 - Secretary may then
 - Re-assign the mortgage to the lender/mortgagee;
 - Act as GNMA issuer, of contract with an entity to do so; or
 - Re-sell the mortgage.

- Loan Servicing – Servicer may be required to continue as servicer of the mortgage, acting as agent of the Secretary, while the Secretary holds the mortgage.
- If the mortgage is resold, the Secretary may stipulate that the servicer continue with the mortgage or can engage another servicer.
- Amends partial claim authority to allow for 30 percent of the unpaid principal balance to be paid (previous provision was for 12 monthly mortgage payments).

Section 123. Modification of RHS Loans in Bankruptcy

- Guaranteed RHS Loans – Secretary may pay the guarantee portion of any losses incurred by the holder of the mortgage note or servicer from a modification in bankruptcy.
- Insured RHS Loans – allows for payment to holder of the mortgage note or servicer for a modification in bankruptcy.

Section 124. Unenforceability of Certain Provisions as Violating Public Policy

- A new section makes certain provisions in investment contracts, which require a pro rata distribution of losses from a cram down across all classes of security interests, unenforceable as a matter of public policy.

Title II-Foreclosure Mitigation and Credit Availability

Sec. 201. Safe Harbor Provision

- Servicers who are consistent with TILA requirements are not be liable for entering into a loan modification, workout, or other loss mitigation plan, including, but not limited to, disposition with respect to any such mortgage.
- Servicers are not limited in the ability to modify mortgages, the number of mortgages or the frequency of modifications.
- Servicers are not obligated to repurchase loans or make payments as a result of a modification or a workout.
- The criteria for the mortgages to be protected under the provision are:
 - Default on the mortgage has occurred or default is foreseeable;
 - The property is owner-occupied; and
 - The servicer genuinely believes the modification or workout will be more profitable than a foreclosure.
- Each servicer must report to the secretary the extent, scope and the results of the servicer's modification activities.

Sec. 202. Changes to Hope for Homeowners (H4H)

- The Secretary of the Department of Housing and Urban Development (HUD) directs the H4H Program and the H4H Board is placed in an advisory capacity.
- The borrower must certify there that they did not intentionally default on their mortgage.
- Requires conformity to Federal Housing Administration (FHA) endorsement policies, as much as possible.
- Eliminates the March 1, 2008 income affordability test.

- Certification of no intentional default on other debts is eliminated, certification of no false information to the new FHA refinance loan is applied, and references to potential jail sentences as a result of false statements are eliminated.
- The borrower must agree, in writing, to repay the secretary for any direct financial benefit achieved from the refinance under the H4H program.
- There is less prescriptive language regarding collection of income tax returns.
- HUD is required to conform program documents, forms, and procedures to those in place for regular FHA loans.
- The borrower cannot have a net worth that exceeds \$1 million.
- LTV restrictions on second lien loans are eliminated for property maintenance
- Up to 50 percent appreciation fee to be shared among the secretary and the holder of the mortgage refinanced herein as opposed to a required 50 percent appreciation fee.
- The Secretary may pay each participating servicer up to \$1,000 per each loan modified under H4H.
- Premiums are reduced from a three percent upfront premium to a two percent upfront premium and annual premiums are reduced from 1.5 percent to one percent.
- The Secretary may establish an auction to refinance eligible mortgages on a wholesale or bulk basis.
- Reduction in Troubled Asset Relief Program (TARP) funds by \$2.316 billion.

Sec. 203. Requirements for FHA-Approved Mortgagees

- Strict guidelines are established for who may originate FHA insured loans.
- Originators must be approved by the Secretary.
- Originators, their partners, directors, principals and employees must not:
 - Be currently suspended, debarred, under a limited denial of participation (LDP), or under restrictions under any other federal agency;
 - Under indictment for anything related to integrity;
 - Subject to unresolved findings with HUD;
 - Been convicted of or pled guilty to a felony related to real estate during the previous seven years or after the submission of the application; or
 - Be in violation of the SAFE Act.
- Mortgagees are required to use the business name of the mortgagee that is registered with the Secretary and maintain copies of all advertisements.
- Mortgagees are subject to penalty for failure to alert the Secretary if a mortgagee's status changes.

Sec. 204. Enhancement of Liquidity and Stability of Insured Depository Institutions to Ensure Availability of Credit and Reduction of Foreclosures

- FDIC limits remain increased to \$250,000 until 2015.
- The Restoration Plan Period is extended from five years to eight years.
- Expands FDIC borrowing authority to \$100 billion.

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- Expands NCUA borrowing authority to \$6 billion.