

# **FORECLOSURE AVOIDANCE, LOAN MODIFICATION AND SHORT SALES**

Read a statistic from RealtyTrac or Pacific Business News that Hawaii Foreclosures are up 503%?

What do you want? Do you want to keep the house? Do you want to sell it? Do you need to buy your self some time to find some place else to live? You know what you have and how you got here. What you want to do will govern how you work with your lender. If you make \$3400.00 a month and have a 2.9 million dollar mortgage you are not going to be keeping your house.

## **I. TIME IS OF THE ESSENCE.**

**A.** If a person is trying to avoid foreclosure time is of the essence hiding will not make it go away. Act and act quickly. If the market is going down then you will get less 90 days from now than if you sell in the next 30 days.

- i. Answer every call from your lender. Talk to whoever calls and tell them that you are having difficulty paying your mortgage payment or if you will not be making any more payments tell the lender. Ask for a loan modification packet. Ask for a Deed-in-Lieu of foreclosure information. WAMU (Now Chase Morgan), GMAC, etc. will typically send you this information. Countrywide (Now Bank of America) or Bank of Hawaii will usually prefer to take your financial information over the phone.**
- ii CREATE a lengthy record of your interactions with the lender. Keep a journal of all of your telephone conversations and the dates. There is a legal princip. called failure to mitigate damages. What this means is that the lender has to work diligently to reduce the amount of damages it sustains from your default on your loan. If the lender does not take action within a reasonable time you have an argument or counterclaim against the lender in foreclosure proceedings regarding the amount of deficiency judgment that should be awarded to the Lender.**

## **B. DETERMINE YOUR EQUITY POSITION**

- i. Call a realtor and ask them what price POINT will sell the home in 30 days (LIQUIDATION PRICE) or less, this is probably the market value. If you are in default on your loan the Lender may do the same: they may contact a local Realtor and get what is called a BPO or BROKERS PRICE OPINION that way the Lender can better calculate its own losses.**

- ii. Don't spend the money on an appraisal.
- iii. Don't ask your neighbors.
- iv. Sit down and assess where you are today. Make a status profile:

- **How much money is coming in?**
- **Where are you with your other bills bank cards?**
- **List your bills in a must pay, should pay and may not pay.**
- **Household cost list must have, should have, like to have and what you can do with out.**
- **Assets what can you sell to buy your self some time eBay and yard sales.**
- **Credit lines cards, equity, friends and family.**

**Make it a family project; include the wife and kids if they can understand what's going on. The adults in the family are under stress the kids know something is wrong the more you hide it the more they want to know. Present the situation to them and assure them you have it under control.**

### **C. OBVIOUS WAYS TO PREVENT FORECLOSURE.**

- i. Refinance if there is equity and you can afford the mortgage payments. **Most loans these days will be what is called full doc. Loans as opposed to the loan most people got into trouble with that were stated income loans. This means you will most likely not be able to simply state how much you make a month. You will have to provide proof to the lender that you are able to afford the loan.**
- ii. Borrow money to pay down the existing mortgage and then refinance.
- iii. If you have other properties with equity, use them to cross collateralize the refinance.
- iv. If credit is bad, bring in a co-signor to complete the refinance.
- v. Bring in a partner, generally a family member as a co-signor/guarantor. Create a co-tenancy agreement or CPR the property if you are able.
- vi. Sell the home, save any equity and start over. If there is no equity, you are in the short-sale situation discussed below.

## **II. FORECLOSURE LAWS AND TIMELINES**

### **A. HAWAII REVISED STATUTES (HRS) CHAPTER 667**

- i. **Judicial Foreclosure:**  
**HRS 667-1 thru 667-4**

**KNOW THE DIFFERENCE BETWEEN A COMPLAINT FOR FORECLOSURE AND A**

## **NOTICE OF MORTGAGEE'S INTENTION TO FORECLOSE.**

- a. The Mortgagee's Attorney will file a Complaint for Foreclosure against the Mortgagor and any other lien holders in the Circuit Court.
- b. If it is a Condominium Unit the AOA will be added as a defendant  
If Real Property Taxes are owed, County of Kauai will be added as a defendant.
- c. HELOC and any Junior Liens appearing on Title will be added as defendants.
- d. You have the right to ANSWER WITH DEFENSES OR counterclaim against the Mortgagee Plaintiff WITHIN 20 DAYS FROM WHEN YOU RECEIVE THE COMPLAINT FOR FORECLOSURE.
- e. You will most likely be served by way of Sheriff with the Complaint for Foreclosure.
- f. If you don't answer the complaint there will be ENTRY OF DEFAULT AND a default motion filed against you.
- g. A Motion for default or summary judgment and interlocutory decree of foreclosure will be filed and probably granted unless the Defendant Mortgagor can come up with material facts that are in dispute. However, the Court may delay entry of any order to give borrower time to bring the loan current or close a short sale.
- h. Findings of Facts, Conclusions of Law and Order Granting Motion is then prepared and a Commissioner is appointed for sale of the property.
- i. The Commissioner will notify all interested parties of the auction. Auctions are held at the New Court House Steps at generally at 12 noon.
- j. After the Auction and Commissioner makes his/her report, Plaintiff files a Motion to Confirm the Sale.
- k. A Confirmation Hearing is set and bidding can and will often take place at the Confirmation Hearing.
- l. If the mortgage is not paid in full and if the Plaintiff asked for it in its Complaint for Foreclosure it is entitled to Deficiency Judgment. This Judgment can be recorded and enforced like all other Judgments.

### **ii. Non Judicial Foreclosure**

#### **HRS 667-5 thru 667-10**

When mortgages have a **power of sale** clause, the power given to the lender to sell the property may be executed by the lender or their representative, typically referred to as the trustee without them having to file a Complaint in the Court.

Hawaii allows these out-of-court foreclosures. It must be in accordance with a sale

clause contained in the mortgage. The power of sale clause will usually require the lender to notify the borrower of any default on the loan before starting the foreclosure process.

If you are being foreclosed on by way of Non-Judicial foreclosure look very closely at the Notice of Mortgagee's Intention to Foreclose by Power of Sale document. **Cal-Western Reconveyance, Corp. and Mortgage Electronic Registration Systems, Inc.** the companies that many of the Mainland banks use as their nominee or trustee do not have any idea how to comply with Hawaii Law re: the Notices and Postponements.

iii. **Nobody uses Alternate power of sale Foreclosure that starts at HRS 667-21**

### **III. FORBEARANCE, LOAN MODIFICATIONS, SHORT SALES AND DEEDS IN LIEU**

#### **A. GENERAL DOCUMENTS AND CONSIDERATIONS FOR ALL PROGRAMS**

##### **i. Ability to Repay.**

The most common mistake that people make when filling out the financial statement is to understate their income, assets, and ability to pay the new loan when modified. The typical mindset is that as the borrower (you) should make your situation look as dismal as possible to convey to the lender that you cannot pay your mortgage and need help. However, this tactic usually backfires, if the lender sees you as being unable to pay even a modified loan then they will not want to work with you and will just foreclose on you now rather than later.

##### **ii. Hardship letter.**

**A Hardship letter is something most Mortgage Companies will require to consider you for a "Work Out". This is your opportunity to appeal to them to give you another chance. This should not be used to complain RE: what they have done or not done to make your situation worse. This letter must be honest and represent the facts clearly. It must prove to them that the situation that caused you to fall behind was temporary and you are now in a position to make your payments on time. You must also have a legitimate excuse for falling behind... financial problems in itself would not be an adequate excuse. Loss of a job, death in the family or an illness would be an acceptable reason to fall behind on your Mortgage temporarily.**

**HARDSHIP LETTER SHOULD LOOK LIKE:**

**I/We are having problems making my/OUR monthly payments because of financial difficulties created by:**

**Determine how you got into this situation:**

- Unemployment**
- Reduced Income**
- Divorce**
- Separation**
- Medical Bills**
- Too Much Debt**
- Death of my Spouse**
- Death of a family member**
- Payment Increase ARM ADJUSTMENTS**
- Business Failure**
- Job Relocation**
- Illness**
- Damage to Property**
- Military Service**
- Incarceration**
- Other (Please Specify)**

iii. The Financial Statement:

A financial statement lists all of your monthly income and expenses. This is where you need to demonstrate to your lender why you are having financial difficulty meeting the current monthly payments but also show how you would be able to afford lower modified payments. It is very important that you are able to demonstrate both of these facts. Current financials **Remember only give YOUR financial information. If the person (i.e. spouse) or entity is not on the loan do not give the financials. If you own a business and it is incorporated do not provide the business financials.**

- iv. Tax returns. Again only your personal taxes, schedules showing business pass through income not to be disclosed.
- v. Pay stubs.

**B. FORBEARANCE BY LENDER.**

- i. In simple terms, "forbearance" means that a lender agrees to postpone or delay

starting the foreclosure process to give the borrower a chance to catch up on late or missed payments.

Any penalties, missed payments and interest, will continue to accumulate on the mortgage forbearance and is added to the remaining balance of the loan. You are generally also asked to sign a forbearance agreement that states when the lender will require you to pay the amount you owe. Once the forbearance period comes to an end, you are once again obliged to make full payments on your home loan. While mortgage forbearance may only serve as temporary fix, it does buy you some time to overcome your financial state, and is a far better option.

### **ARM reset forbearance**

#### **Watch out for Accelerated Foreclosure Terms:**

An agreement within the Forbearance agreement that says something to like: If the Mortgagor is late the Mortgagee does not have to go through the normal default notice provisions of your Mortgage, they can go right to foreclosure.

### **C. LOAN MODIFICATION.** Again, Request the Packet from the lender.

Here are the various **loan modification** forms you will need to fill out:

#### The Borrower's Statement:

This statement includes your basic personal information such as your name, social security number, address, place of employment and other basic information. This form should be easy for you to fill out. Just double check to make sure everything is accurate.

The Hardship Letter: As we described earlier.

#### Cover Sheet:

On the cover sheet submission form you will request new loan terms and a lower mortgage payment amount. If you figure out what you can afford to pay ahead of time you will be in a much better position to negotiate with your lender if necessary.

It is very important to be accurate and thorough in filling out your loan modification forms. You are preparing a case for yourself as to why you are a good candidate for a loan modification. This involves not only showing that you are in financial hardship but that you will also have the means to meet lower monthly payments under a loan modification agreement. It is very important that you accurately list your income and expenses and present your case on the forms in a clear, concise manner. If you do this, you have a good chance of having your **loan modification** request approved.

ii. Possible loan modification terms.

Generally, if you qualify pursuant to the Lender's guidelines for Loan Modification the Lender will reduce your interest rate by 1 to 3 points. This will greatly reduce your monthly payment. However, be very cautious before signing the documents and examine all of the terms. The lenders responsibilities are not the same when making these offers as they were when they originated the loan.

Look for fees and penalties tacked on to the back end of the loan.

Look for increases in interest rates after certain period of time.

Look for **"We'll see provisions"** i.e. if you make the next 5 payments we'll see about changing your terms to the following. This is an agreement to agree and they are not obligated to adhere to any terms.

**D. SHORT SALE.**

i. What is a short sale?

In a short sale, the bank or mortgagee lender agrees to discount a loan balance due to an economic or financial hardship on the part of the mortgagor. This negotiation is all done through communication with a bank's loss mitigation or workout department. The home owner/debtor sells the mortgaged property for less than the outstanding balance of the loan, and turns over the proceeds of the sale to the lender, sometimes (but not always) in full satisfaction of the debt.

ii. Practical considerations:

List the Property

Are there any houses being sold at ANY price in your neighborhood?

The majority of lenders have a pre-determined criteria for such transactions.

The AOA or HOA may need to also approve your Short Sale.

If you have Mortgage Insurance on your Loan the Insurer has a say in the Short Sale as well and will sometimes try to negotiate a pay-off for its losses.

A short sale does adversely affect a person's credit report, though the negative impact is typically less than a foreclosure. Short sales are a type of settlement. Like all entries except for bankruptcy, short sales remain on a credit report for seven years. Depending upon other credit information it is typically possible to obtain another mortgage 1-3 years

after a short sale and I am hearing at least 5 yrs. after foreclosure..

iii. Is the borrower in default (typically must be)?

Nowadays, the Lenders seem more receptive to Short Sales even where the Mortgagor is still current on payments, as they are able to determine the cost and likelihood of the property selling at a Foreclosure Auction.

iv. Short Sale Timing.

1 to 3 Days An offer is made, subject to the lender's approval.

Week 1 The short sale package is prepared and submitted to the lender.

Week 2 The lender processes the package.

Week 3 The lender orders a broker's price opinion (BPO).

After an initial offer has been made, the lender will hire an agent to produce the BPO. Once the BPO comes in, it can be very difficult to convince the lender to lower the price from the BPO.

The BPO may be too high if done by an inexperienced agent or not conducted thoroughly. Your agent should try to influence the BPO by making sure that they are the contact person for gaining access to the house. The agent should talk with them about price, talk with them about the condition of the property, talk with them about the market and try to educate them a little bit so they can do a fair job.

Some deficiencies that Broker's often don't consider are:

The property is a CPR UNIT.

The property is on Agricultural or Restricted Land.

The property is next to unruly neighbors.

Week 4 to 5 The lender says they can't find the package and asks the buyer to resubmit it.

Week 5 to 6 The BPO is submitted to the lender.

Week 6 The BPO is evaluated by the lender.

Week 6 The lender says they can't find the package and asks the buyer to resubmit it.

Week 7 to 8 A loss mitigation specialist is assigned and the whole package is reviewed.

Week 9 The lender proposes a counter offer.

Week 10 to 12 Negotiation continues until an agreement is reached.

v. Offering price in relation to amount owed to the Lender. OTV or Offer to Value Ratio

vi. Junior mortgages?

Junior liens - such as second mortgages, HELOC lenders, and AOA, HOA (special assessment liens) - may need to approve the short sale.

vii. Hawaii Revised Statutes 480E considerations. Do Realtors fall within the definition of "distressed property consultant" Before **May 20, 2009**, **Yes**, all real estate agents, brokers working on Short Sales or Listing a property where the Seller is no longer making Mortgage payments should have had a HRS 480E disclosure form and sales contract forms.

### **1. MORTGAGE RESCUE FRAUD PREVENTION ACT**

If the realtor you have chosen before May 20, 2009 did not give you a **480E** Disclosure form to fill out and sign they are probably not qualified to assist you with your short sale.

On **May 20, 2009**, Linda Lingle signed **Senate Bill 34** into law as **Act 66** excluding licensed real estate brokers or salespersons from the requirements of **HRS Section 480E-2**. It is now amended to exclude:

“A person currently licensed as an active real estate broker or real estate salesperson in Hawaii pursuant to HRS chapter 467, when acting in the capacity of a real estate broker or real estate salesperson in accordance with customary industry standards.”

However, under **Chapter 467** the Real Estate Broker/Salesperson is barred from:

“Acquiring an ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated.”

So, at this point the Realtor/Broker should have 467 and 480E disclosures appended to the listing agreement, disclosing what they can and cannot do.

viii. Will the lender waive its deficiency judgment rights?

\* If not, how will you pay the deficiency?

\* Family.

\* Unsecured loan from lender.

\* Keeping the buyer under contract and subject to the approval of the short sale by the lender.

### **E. DEED IN LIEU OF FORECLOSURE.**

A Deed in Lieu of Foreclosure is where you the Mortgagor agree to deed the property back to the Bank and save the foreclosure process, generally, in exchange for waiver of the Mortgagee's right to a deficiency judgement.

### **Why won't your lender just take a Deed in Lieu of Foreclosure?**

One reason not so obvious to the homeowner is the accounting practices of the lenders. It is more beneficial to have a foreclosure in progress than to have a bank owned property, called "real estate owned" (REO) property. While the difference is relatively small to the lender's accounting system, when multiplied by thousands of foreclosures, the REO's can be a financial catastrophe. More often, the lender has gotten a Broker's Price Opinion (BPO) or appraisal as soon as the homeowner is 90 days late on his mortgage. The lender knows exactly how much trouble they are in when they take the home back by a deed in lieu of foreclosure or by a foreclosure action that turns the property into an REO.

If the property is encumbered by a second mortgage and other liens such as mechanic liens or any junior mortgages or judgments, the only way the lender can safely take the property back is to "extinguish" these junior liens and get free and clear title after the foreclosure action. So if the homeowner calls the lender and requests to give a deed to the lender, the lender will do his research first to see whether the foreclosure process is necessary.

i. Practical Considerations for (DIL)

Has the property been marketed for sale and if so, for how long?

Most Banks won't even accept your DIL application until you have had the property listed for at least 90 days.

Will the lender waive its deficiency judgment rights?

If the Bank won't waive its right to deficiency judgment in the Deed-in-Lieu document don't sign it. All recordable Deeds-in-Lieu should be reviewed by an attorney.

ii. 1099 forgiveness of debt income considerations.

### **IV. BANKRUPTCY CONSIDERATIONS.**

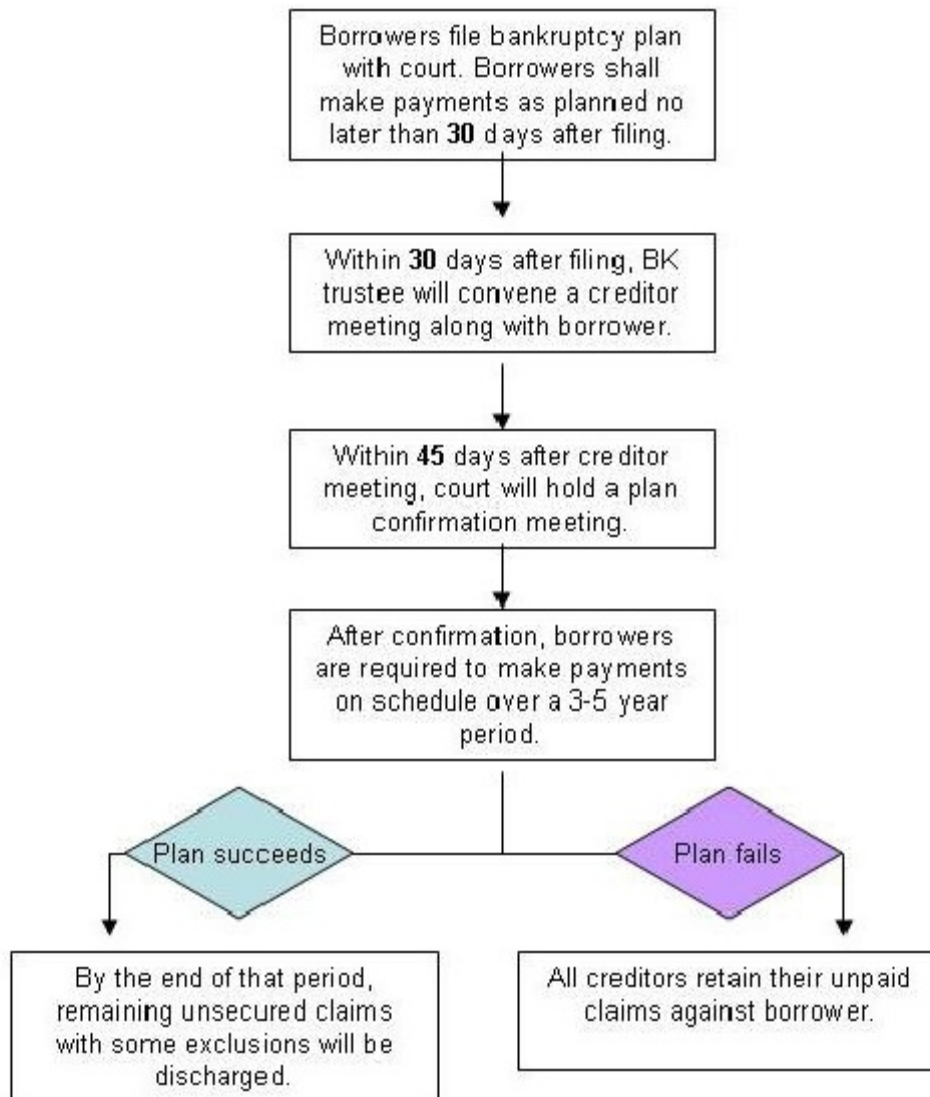
The beginning of a bankruptcy case, if before the foreclosure sale date, will stop the foreclosure sale from taking place. This is called the automatic stay under Section 362 of the Bankruptcy Code. Through a type of Bankruptcy called a "**Chapter 13**" people can keep their property from being sold at foreclosure. Quite often, filing a chapter 13 will also discharge (eliminate) any outstanding credit card debts, medical bills, payday loans and other unsecured debts. In certain circumstances, a chapter 13 can even strip off (eliminate) a 2nd or 3rd mortgage.

Under a Chapter 13 plan, you can make regular monthly payments and be given a reasonable period of time to bring your loan payments up to date to save your property.

Bankruptcy may be the best solution for extreme financial hardship. However, it should be used as a last resort, since it can have long- lasting consequences in relation to your credit.

In order to be eligible to file a chapter 13, you must have regular income sufficient to support your ongoing Mortgage payments as they become due in the future. You will also be required to make monthly payments to a chapter 13 trustee (who is a person appointed by the bankruptcy Court to administer the monthly payments). Generally, through a chapter 13, someone who has fallen behind with their mortgage payments will make monthly payments over a course of 3 to 5 years to come current with their pre-petition mortgage deficiencies. Upon completion of the plan payments, the mortgage is reinstated, the property is out of foreclosure and, frequently, all other personal debts are eliminated.

**Chapter 7** bankruptcy doesn't provide for a mechanism to cure pre-bankruptcy arrears. Hence, chapter 7 is not a viable solution for saving homes in foreclosure. However, a chapter 7 may be able to deal with any deficiencies resulting from foreclosed upon properties



For more information on foreclosures and bankruptcy, consult with an attorney experienced in bankruptcy law.

## V. OVERVIEW OF RECENT BAIL OUT LEGISLATION.

### **Mortgage Forgiveness Debt Relief Act of 2007 extended to 2012**

Normally in US law when a lender decides to forgive all or a portion of a borrower's debt and accept less, the forgiven amount is considered as income for the borrower and is liable to be taxed.

However, after the signing of the Mortgage Forgiveness Act, amendments have been made to remove such tax liability and allow the borrower and lender to work freely together to find a

common solution that is beneficial to both parties. This protection is limited to primary residences -- rental properties are ineligible for relief -- so consultation with a tax advisor is necessary to ensure that a borrower qualifies. The amount of forgiven mortgage debt allowed to be excluded from income tax is limited to \$2 million per year.

**Hope for Homeowners Act of 2008**

as modified by Obama's **Helping Families Save Their Homes Act** signed **May 20, 2009**  
**Obama's Making Home Affordable plan.**

[www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov)

[www.efanniemae.com](http://www.efanniemae.com)

Home Affordable Modification Program (HAMP):

There are 2 links on the making home affordable website:

**\*\*1 for Refinance – you must be current on your loan to qualify**

You must have a Fannie Mae/Freddie Mac. Loan if you don't know you can enter your loan number on the website to determine if you have a Fannie Mae/Freddie Mac guaranteed loan.

Your payment on your first mortgage (including principal, interest, taxes, insurance and homeowner's association dues, if applicable) must be more than 31% of your current gross income. There is a calculator on the website to determine this.

and

**\*\*1 for Modification – your loan must be less \$729,750.00**

\*\*\*\*Also, there is a lot of good information on the [www.efanniemae.com](http://www.efanniemae.com) website addressed to servicers i.e. lenders. You should look through this information it will help you understand how your lender will proceed regarding your loan.

Other aspects of Obama's Plan:

**Foreclosure Alternatives** provide incentives for servicers and borrowers to pursue short sales and deeds-in-lieu (DIL) of foreclosure in cases where the borrower is generally eligible for a MHA modification but does not qualify or is unable to complete the process, which helps prevent costly foreclosures and minimizes the damage that foreclosures impose on borrowers, financial institutions and communities.

**Home Price Decline Protection Incentives** will provide lenders additional incentives for modifications where home price declines have been most severe and lenders fear these declines may persist. To encourage the modification of more mortgages and enable more families to keep their homes, the Administration, has developed an innovative payment that provides compensation based on recent home price declines. Together the incentive payments on all modified homes will help cover the incremental collateral loss on those modifications that do not succeed. payments will be linked to the rate of recent home price decline in a local housing market, as well as the average cost of a home in that market.

## **HUD WEBSITE HUD APPROVED FORECLOSURE AVOIDANCE COUNSELORS**

**Go to:**

[www.hud.gov](http://www.hud.gov)

**Emergency Economic Stabilization Act of 2008:** I won't talk about TARP so I won't get furious.

**Mortgage Cram-Down Bill** didn't make it into current stimulus package but I expect it to reemerge. The proposed bankruptcy law reform will allow a judge in a Chapter 13 filing to reduce or "cram down" During the implementation of the bankruptcy plan, the crammed down portion of the mortgage will be treated as an unsecured claim of equal priority to other unsecured claims such as credit card debt. The crammed down amount may therefore be partially recovered from a borrower's disposable income over a 3- to 5-year period. The benefit of a mortgage cram down to the borrower is contingent upon successful completion of the bankruptcy plan. the balance of a mortgage securing a principal residence to the current property value, along with other rate and amortization term changes. During the implementation of the bankruptcy plan, the crammed down portion of the mortgage will be treated as an unsecured claim of equal priority to other unsecured claims such as credit card debt. The crammed down amount may therefore be partially recovered from a borrower's disposable income over a 3- to 5-year period. The benefit of a mortgage cram down to the borrower is contingent upon successful completion of the bankruptcy plan.

## **VI. COMPLEX FEDERAL STATUTES**

- i. Truth-in-Lending Act: TILA/REGULATION Z** Most of the specific requirements imposed by TILA are found in Regulation Z (12 Code of Federal

Regulations Section 226), so a reference to the requirements of TILA usually refers to the requirements contained in Regulation Z, as well as the statute itself.  
Truth in Lending Act **15 U.S.C. 1601**

A legal right to TILA mortgage rescission can extend up to three (3) years out from the date of closing if:

**It's a REFINANCE loan transaction**

**It's on your PRIMARY residence**

**It was closed in the last THREE years**

**A forensic loan audit OR Foreclosure Attorney may reveal a MATERIAL disclosure violation**

Tip: This is where most TILA violations occur. If there is a misdisclosure, it is usually because of an understated finance charge, i.e., there was a charge which should have counted as a prepaid finance charge and was not (most common: an arbitrarily inflated appraisal fee [e.g., over \$500] or a title insurance charge [e.g., over \$600] which was therefore not "bona fide and reasonable.")

Failure to deliver a proper 3-day notice of right to rescind triggers an extended right of rescission. **12 C.F.R. 226.23(a)(3)**.

Failure to make clear, conspicuous, and accurate material disclosures also triggers an extended right of rescission. **12 C.F.R. 226.23(a)(3)**. Material disclosures include the: (1) annual percentage rate, (2) finance charge, (3) amount financed, (4) total payments, (5) or payment schedule. **12 C.F.R. 226.23(a)(3)**

The extended right of rescission lasts 3 years from the date of the closing of the loan. **12 C.F.R. 226.23(a)(3)**.

Statute of Limitations

1 year for affirmative claims. **15 U.S.C. § 1640(e)**;

3 years for rescission. *Beach v. Ocwen*, 523 U.S. 410 (1998);

\*\*\*Unlimited as a defense to foreclosure in the nature of a recoupment or setoff.

**ii. RESPA The Real Estate Settlement Procedures Act  
Disclosures At The Time Of The Loan Application**

The first disclosures must be made at the time of the mortgage loan application. RESPA requires mortgage brokers and lenders to provide borrowers with three

specific disclosures at this point in the transaction:

1. A Special Information Booklet must be provided to the prospective borrower at the time of the loan application or within three days thereafter. This booklet must describe and explain the nature of all closing costs; explain (and contain a sample of) the RESPA settlement form; describe and explain the nature of escrow accounts; explain the choices available to borrowers for the selection of settlement providers; and explain the different types of unfair practices and unreasonable charges that the borrower should watch out for in the settlement process.
2. A Good Faith Estimate (GFE) of settlement costs must also be provided to the borrower. The GFE must describe all the charges the buyer is likely to pay at closing. The GFE is only an estimate, and the total amount of the charges the borrower may be liable for may vary from the amount set forth in the GFE. If the lender requires the borrower to use a particular settlement provider, then the lender must also disclose this requirement in the GFE.
3. The lender must also provide the borrower with a Mortgaging Service Disclosure Statement. This statement must advise the borrower whether the lender intends to service the loan or transfer it to another lender. The statement must also contain information about the steps borrowers can take to resolve any complaints they may have.

**RESPA** must be a "federally-related mortgage loan" to include most loans for the purchase of 1-4 unit residential dwellings, including first mortgages, subordinate liens, and home equity loans.

Very strict Statute of Limitations pursuant to **12 U.S.C. § 2614**.

Prohibits Kick-Backs and Unearned Fees referrals and payments between Mortgage Broker and Lender.

Prohibits Servicing Violations

Prohibits Charging for TILA forms, etc.

### **HUD-GFE form**

The lender or mortgage broker is required by RESPA to send these documents out within three days of receiving the application. The lender is only required to give you a booklet if you are purchasing a home. If the lender denies your application within three days, it is not required to give you these documents.

Junk Fees charged by Mortgage brokers found to be in violation of RESPA in certain Federal Courts.

Ensuring that Escrow account procedures have been followed.

In cases of violation of **Reg Z, TILA and RESPA** the docs have to be reviewed by a qualified professional that can determine just what and who violated the Regs. At that point it has to be determined if it is in the interest of the borrower to rescind or modify the lien for certainly more manageable results. There is no second guessing the issues

reflected in the file, it has to be a qualified review, performed by a qualified professional.