

# HAMP – A Win-Win for Homeowners and Investors

By Latrice Latin

When the bottom fell out of the housing market in 2008, the federal government was forced to take action. With one in 10 homeowners delinquent on their loans, the government convinced servicers to offer loan modifications. This created a labyrinth of available programs. While the delinquency rate has decreased, it is still significantly higher than it has been in the past.

After the crash, the Treasury Department created the home affordable modification program (HAMP) and required that banks who participated in the Emergency Economic Stabilization Act of 2008 (better known as the bank bailout) to participate.

Fannie Mae and Freddie Mac, the two largest holders of home mortgages, were also bailed out by the U.S. government, put under the strict control of the newly created Federal Housing Finance Agency (FHFA), and required to offer homeowners facing foreclosure a version of the HAMP loan modification. Not to be left behind, the Federal Housing Administration (FHA), part of the Department of Housing and Urban Development (HUD), required its loan servicers to offer yet a third version of HAMP.

In addition, HAMP loan servicers as well as public and private investors have, over the intervening years, devised hundreds of different programs to modify loans or provide funds and waive deficiencies to allow underwater homeowners to turn over properties they could no longer afford.

The economics of offering a loan modification are sound. More often than not, a well-designed loan modification, especially one that reconciles the amount owed to the actual value of the property and sets the payment at an amount the homeowner can realistically afford, has a higher net present value to investors than the liquidation of the property. Such a loan modification creates a winning scenario for both the homeowner and investor.

The challenge for large loan servicers and their government regulators has been to create an environment where such well-designed loan modifications are possible. For example, HUD and FHFA have

thus far refused to allow servicers of Fannie Mae, Freddie Mac or FHA loans to reduce principal balances to the market value of the properties. However, they do allow mechanisms to defer principal at no interest to create affordable payments. This policy makes loan modifications less likely to succeed since underwater homeowners are simply less likely to make all of their payments. Some Wall Street investors are hampered by bond covenants and other contractual restrictions.

Despite the federal government's intransigence, it is clear that the solutions offered to distressed homeowners have improved every year since the recession. Fannie, Freddie and FHA have gotten around the governmental restrictions of principal reductions by beginning to combine and sell their defaulted loans in packages to third-party investors. Some of those investors are nonprofits with the express intention of aggressively modifying loans and keeping people in their homes. All of these investors are purchasing loans at a discount and are able, if not always willing, to negotiate win-win outcomes for themselves and borrowers to allow homeowners to remain in their homes.

In addition, new regulations under the Real Estate Settlement Protection Act (RESPA) require mortgage loan servicers who undertake loan modification reviews to respond quickly and act in good faith. Homeowners seeking modification now have a private right of action to enforce very specific rights.

These programs have worked for many homeowners, but a new trend has caused problems for some who have already had their loans modified. Larger banks are quickly getting out of the mortgage loan servicing business and loan servicing is being transferred to smaller, very thinly capitalized loan servicers. Our firm has had to file suit on several occasions because a new servicer has failed to recognize a loan modification agreed to by the prior servicer. Federal RESPA regulations now provide protection in these instances.

One of the best features of the new regulations is that mortgage loan servicers are prohibited from moving forward with foreclosure activity of any kind while a



loan modification application is being reviewed. Clients who are having trouble making their mortgage payments should consider seeking a loan modification under the guidance of a lawyer who understands RESPA regulations and has a working knowledge of the latest industry trends to have the best chance of obtaining a win-win loan modification.

Attorney Latrice Latin was admitted to the Georgia Bar in 2007; received a Bachelor of Arts from Georgia State University and a Juris Doctor from Walter F. G. School of Law at Mercer University. She has attended the Max Gardner Bankruptcy boot camp and Foreclosure Defense Boot Camp. Currently, she assists homeowners by providing loan modifications. She actively files foreclosure defense actions in Superior and Federal District Courts. She also sues credit card companies and debt collection agencies under the Georgia Fair Business Practices Act and the Fair Debt Collection Practices Act with remarkable results and monetary recoveries for clients.

