MORTGAGE MODIFICATIONS AND BANKRUPTCY

Everyone is claiming to offer mortgage "modifications" right now. The sad truth is that most mortgage companies are making these offers based upon incentives given to them by the Federal Government. However these same government entities are not overseeing the process and the large majority of modifications are denied. Here are some things to consider and watch:

1. In many cases, the program you have signed up for is a HAMP (or other program)'s "Trial Program." Here, you will be given a smaller (modified) mortgage payment for 3 to 6 months while the mortgage company gathers information from you and "considers" whether to offer you a real modification. In many cases, the owner is "denied" the modification at the end of the Trial Period. The only problem is that now they have paid 6 months of the temporary lowered amount and now the mortgage company will tell them that they are now "behind" on their mortgage and will want the full amount paid to catch up quickly or a foreclosure will be filed or continued.

2. Even if you are granted a modification the modification documents will state that if you later file a Bankruptcy Case, the modification is null and void and will be rescinded. As a result, you may be better off applying for the modification AFTER you have filed your bankruptcy case and the case has been completed and closed.

3. If a modification is approved, be sure to insist that the mortgage company send you back a copy of the signed (by them) documentation. In many cases, the owner signs the paperwork and sends it back to the mortgage company, but then later discovers that the mortgage company never signed the paperwork themselves and now denies that the modification was approved.

4. Some modifications will agree to take the amount that you are in arrears (behind in your payments) and place it to the end of the loan. They will then lower the monthly payment by converting the new modified loan into a 40 year (or even 50 year) mortgage. In this case, it is doubtful that you'll ever own the home. Remember that you'll be taking back due interest payments, putting these amounts at the end of the loan, AND THEN paying interest on this interest for the next 40 years. If you owe $20,000 in back payments, depending upon the terms of the modification, you could end up paying back 5 to 20 times the original arrears owed over the long haul. If you possibly can afford it, you would have been better simply doing a Chapter 13 Plan that allows you to make extra payments over 60 months and pay off the arrears in full.

5. After you file a Chapter 13 Plan that is paying back mortgage arrears, the mortgage company may be more willing to offer you a modification after you have made a number of regular Chapter 13 payments. As long as the mortgage company isn't using a tactic such as that discussed in Paragraph 4, above, it may make sense to do the modification. If this is the case, be sure to notify your attorney since the mortgage company will no longer be getting their arrears payments from your Chapter 13 Plan. In these cases, we can often file a Modified Plan and lower your remaining Chapter 13 Plan payments.