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ATTY. RAYMOND BULAON

Proposed law for 'forced' loan modification?

closure notice during the year. Our policymakers in Washington are scrambling for a solution to help troubled homeowners. When will relief be available? As foreclosures increase, some homeowners are trying to take advantage of falling interest rates in order to lower their mortgage payments. According to the Mortgage Bankers Association, 85 percent of all mortgage applications are now for refinancing. The average interest rate for a

fixed-rate mortgage for 30 years is approximately 4.75 to 5 percent. The problem with refinancing for most people, of course, is the obvious fact that property values have declined significantly, and most properties have either zero or negative equity. Thus, a lot of homeowners are stuck with mortgage payments that they can no longer afford. As a result, homeowners are now looking at loan modification as their only other option.

Voluntary efforts by lenders to modify mortgages have somewhat helped to slow down the pace of foreclosures but, in my opinion, are still not enough. A lot of these lenders are unable to cope with the high volume of defaulted loans and their loss mitigation or loan workout departments are understaffed. This has made it difficult for homeowners to communicate with their lender in finding a resolution. Most lenders will not even discuss loan modification unless the homeowner is already behind on payments. Thus, a lot of homeowners are intentionally defaulting just to get their lender's attention. I know it doesn't make sense, but that is exactly what is happening these days.

This week, the Senate will debate its version of the stimulus and recovery package which includes a measure that will allow bankrupt homeowners have their mortgages modified under court protection. But expect some delays. It seems like the Senate leaders and the Obama administration cannot agree on whether the measure should be part of the overall stimulus and recovery package or if it should be considered under separate legislation. They are afraid that including the foreclosure relief measure in the bill will cause the Republicans to either delay or reject the entire package. There is no doubt that the need for foreclosure relief is urgent but passing actual legislation that the lawmakers can agree on is not as easy as it sounds.

Under the proposed measure, bankruptcy judges will be allowed under Chapter 13 bankruptcy to reduce the mortgage balance on the debtor's principal residence if the property has negative equity (Chapter 13 is the type of bank-

ruptcy for individuals with regular income who can at least pay some of their debts). So let's say you owe \$500,000 on your primary residence and your property is only now worth \$350,000. In this case, the judge can reduce the loan balance to \$350,000. The difference of \$150,000 becomes an unsecured debt to the lender and can be paid off, most likely for pennies on the dollar, at the end of the case. This process is known as a "strip down." The judge can also erase periodic rate adjustments, prepayment fees, balloon payments, etc. and all other terms of the original loan that make so many mortgages toxic for a lot of homeowners. (Currently, a "strip down" may be possible with a wholly unsecured junior trust deed—let's say a second mortgage on your residence but you cannot do it with the first mortgage on your property. The proposed bill, if passed, will allow you to do this.)

Whether or not Congress is on the verge of finding a solution to stem the tide of foreclosures still remains to be seen. As this country continues to face the threat of 8 million foreclosures in the next several years, there is still no easy fix. Giving bankruptcy judges the power to modify mortgages may not be a perfect solution to the housing crisis, but it may be a good start. If anything, at least it will be for people who are most serious about keeping their homes and less likely to default again. The reason I say this is that most people look at bankruptcy as their last resort and will not subject themselves to it unless they have no other way to keep their property.

If you or someone you know is facing foreclosure and would like to know what options are available, please call Toll-Free 1-866-477-7772 to schedule a free office consultation. We have offices in Glendale, Cerritos and West Covina.

None of the information herein is intended to give legal advice for any specific situation. Atty. Ray Bulaon has successfully helped more than 4,000 clients in finding solutions to their debt problems. To schedule a free attorney consultation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772.

(Advertising Supplement)

Factors that are considered in an award of spousal support

BARRISTER'S CORNER



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THE purpose of spousal support is not defined by the legislature in that its purpose varies according to the facts and circumstances of each case. The facts and circumstances of a particular case may be such which call for no spousal support, or for support for a very limited period of time, with the purpose to assist the supported spouse to "get back on his or her feet" as a single person, or until community property is distributed. On the other hand, the facts and circumstances of another case may call for support for an extended period of time, perhaps until death of the supported spouse, the purpose for which to provide assistance to one who cannot support himself.

The two situations mentioned hereinabove are extreme cases, on opposite ends of the spectrum. Quite obviously, the facts and circumstances in a particular case may be such which call for some amount of support for some period of time, though not until death of the supported spouse. For example, the court may order support for that period of time required for the supported spouse to obtain or complete an education, to allow the supported spouse to take care of the children until they reach an age where a return to employment would be more feasible, or to become self-supporting within a reasonable time.

Although the use of standard guidelines based on income is encouraged in the award of temporary support, such guidelines cannot be used in awarding permanent spousal support. As indicated hereinabove, the award of support is in large part

based on the facts and circumstances of the particular case. In determining spousal support, the court considers numerous factors, set forth in Family Code Sec. 4320. They include: 1) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, 2) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party, 3) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living, 4) The needs of each party based on the standard of living established during the marriage, 5) The obligations and assets, including the separate property, of each party, 6) The duration of the marriage, 7) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party, and 8) The age and health of the parties.

The factors set forth hereinabove are only several of the many factors the court will consider in deciding the issue of spousal support. In that the amount and duration of an award is largely based on the facts and circumstances of the case, it is advised that one who is requesting support, or is opposing a request for support, obtain experienced counsel, who will be able to present the facts and circumstances in the best light possible.

Atty. Kenneth Ursua Reyes was President of the Philippine American Bar Association. He is a member of both the Family law section and Immigration law section of the Los Angeles County Bar Association. He has extensive CPA experience prior to law practice. LAW OFFICES OF KENNETH REYES, P.C. is located at 3699 Wilshire Blvd., Suite 700, Los Angeles, CA, 90010. Tel. (213) 388-1611 or e-mail kureyeslaw@aol.com. Visit website Kenreyeslaw.com.

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