



A Reasoned Solution to the Foreclosure Crisis

One of the issues that has surfaced in the recent bailout and stimulus proposals over the past few months is the issue of providing homeowners burdened by excessive mortgages with relief under the bankruptcy laws. Presently, such homeowners cannot use the bankruptcy laws to adjust burdensome first mortgages (referred to as "cramdown"), even if the amount of the mortgage greatly exceeds the value of the home. The Commercial Law League of America, a long standing and respected national organization of attorneys and other experts in the area of credit and finance, has supported home mortgage modification provisions since early 2008. It has not done so because it is a debtors' or creditors' issue, but because it promotes good economic policy and the times require it.

It makes economic sense because, by permitting modification of home mortgages, good lending practices are reinforced as lenders are encouraged to thoroughly examine the character of the borrower and the collateral at the time of the initial loan process.

Also, in these times, there is substantial evidence that the holders of these collateralized securities do not have the authority to modify the terms of these loans, no matter how much sense it makes to modify an individual mortgage. The Bankruptcy Court provides an efficient and timely forum for the resolution of these loans which will benefit both parties – debtors because they will retain their homes under reasonable terms, lenders because a troubled loan will be resolved, value realized, and foreclosure avoided (which usually delays realization and reduces the amount realized). Further, it is the experience of CLLA members that few personal bankruptcy reorganizations are successful if the mortgage exceeds the value of the home, even though the debtor's home is at risk. Upon failure, foreclosure follows, realizing the lender less than the value of the property at the beginning of the bankruptcy process, while values are generally depressed further by foreclosure. In contrast, modification of the loan to the collateral's value will result in greater returns for the lender as success is much more likely, while price stabilization is encouraged.

The CLLA has been vigorous in its support of this legislative initiative and, we urge our legislators and the various creditor and debtor-based interests to work together to advance this solution to help solve the current foreclosure crisis.

Steven Ungerman

CLLA Bankruptcy Section

Chair

Steven A. Ungerman,

Attorney at Law

Dallas, TX

Peter Califano

Bankruptcy Section

Legislative Committee Chair
and Chair-Elect

Cooper, White & Cooper, LLP

San Francisco, CA

Louis Robin

Fitzgerald, O'Brien & Robin

Longmeadow, MA