

THE ANDRICH LAW FIRM P.C.

Real Estate · Estate Planning · Commercial Transactions

4538 North Fortieth Street Phoenix, Arizona 85018

Telephone: 602.774.3200 Facsimile: 602.774.3205

**HOLIDAY MOVIES AND HUD MAY INSPIRE YOU TO
SKIP MORTGAGE PAYMENTS AND SUE YOUR
LENDER IF THEY ATTEMPT FORECLOSURE ON
YOUR HOME WITHOUT FIRST OFFERING YOU
A LOAN MODIFICATION**

Every timeless holiday movie is centered around financial strife. Some examples:

- 1) “It’s A Wonderful Life” – George must come up with \$8,000 or he will be arrested; the town will lose its savings & loan; and Old Man Potter will be the only financial institution where the citizens can borrow money – albeit under exorbitant terms. The entire town gives their money to George; everyone starts singing; and Clarence gets his wings.
- 2) “National Lampoon’s Christmas Vacation” – Amid the stress of hosting multiple family members, Clark has an emotional breakdown because his employer decided to give each employee a year’s membership in the “jelly-of-the-month club”, instead of the annual monetary holiday bonus. Clark used his family’s entire savings to make a nonrefundable deposit on an inground pool. Without the monetary holiday bonus to complete the pool construction and replenish the family nest egg, Eddie (Clark’s brother-in-law) is forced to take Clark’s boss hostage until the boss decides to give Clark the monetary bonus.
- 3) “White Christmas” – Bob, Phil, Betty and Judy travel to Vermont and orchestrate musical performances that will save a picturesque lodge owned by a retired army general. With one last magical song (performed by Bing Crosby), the lodge is saved from foreclosure.

You get the idea. Holiday movies require its characters to overcome seemingly-impossible financial adversity. All it takes is that last-minute effort or word of advice. No one will confuse me with “Clarence”, but let me try to earn my wings this year.

1. The Deadline to Obtain a Loan Modification is December 31, 2012.

I cannot stand the local radio commercials warning you to schedule your appointment with a loan modification company before December 31, 2009, because “changes to the program are coming.” What is changing? Nothing. The federally-created “Home Affordable Modification Program” (“HAMP”) requires that all loan modification be completed no later than **December 31, 2012 – two (2) years from now.**

Can you guess why the loan modification companies want you to retain them before the end of the year? Most loan modification companies will be outlawed by July 1, 2010, when Arizona passes a law requiring all loan modification companies to be licensed and regulated.

2. Beware the Mortgage Company Disguised as a “HUD-Approved Housing Counselor.”

I thought that once HUD began certifying housing counselors, I could then devote more attention to the commercial loan modification adventures. Currently, I am not convinced that HUD uses an effective application and screening process to certify housing counselors. Some of my clients have asked me to perform background checks on the Arizona housing counselors. After some nominal research, I found a few that were actually using the housing counselor position as a front for their mortgage business.

These individuals advertise themselves as a “free counseling and loan modification servicer”, but then attempt to induce distressed borrowers into completing a mortgage refinance through the “counselor’s” for-profit mortgage company. I know HUD is busy. But why can they not verify that the non-profit and for-profit companies conduct their businesses from the same address? Moreover, those questionable non-profit counselors fail to disclose their existence to the Arizona Financial Department of Financial Institutions. Until HUD can improve its application process, I would avoid engaging a housing counselor.

3. Under the Home Affordable Modification Program, Your Lender Must Offer You a Loan Modification Before Attempting a Foreclosure.

Here is the direct quote from the feds:

“If you are at risk of foreclosure, participating servicers may not proceed with a foreclosure sale until you have been evaluated for a loan modification under HAMP, and if eligible, offer you a trial modification.”

makinghomeaffordable.gov

Based on what HUD says, you could miss one mortgage payment, three mortgage payments or even ten mortgage payments. Your lender (if it is a participating servicer and the loan is the primary loan used to purchase your home) is precluded by federal law from foreclosing on your primary residence, unless they have offered you a HAMP loan modification application; reviewed the application; and found sufficient reason to deny the application.

Lenders that attempt foreclosure on your primary residence without first evaluating you for a HAMP loan modification may be subject to large punitive damages for committing fraud and misrepresentation against you!!!

Take a deep breath and think for a minute. Do you make the mortgage payment or do you buy presents for family and friends? Do you make the mortgage payment or do you spend the money on a plane ticket to visit loved ones? **PLEASE NOTE THAT BEFORE TAKING A FINANCIAL RISK OF THIS NATURE, YOU BETTER MEET WITH YOUR ATTORNEY TO DETERMINE WHETHER YOU QUALIFY FOR A HAMP LOAN MODIFICATION.**

But look how your perspective may have just changed. What you might have thought would be the worst holiday season ever for you may have just turned into the best. When a loan modification is completed, the outstanding balance is modified. You do not have to bring missed payments current before modifying the loan. Who knows? Your lender may even be forced to pay you because it tried to foreclose your home without first evaluating you for a HAMP loan modification.

All of a sudden that \$500 plane ticket does not seem too outrageous. You could propose to your girlfriend and even give her the ring she wants. I do not want to encourage any financial irresponsibility. But you have enough to worry about during the holidays. I hope that you found these words helpful. I hope that I earned my wings. It sure is better than me jumping into an icy river to save you from drowning.