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**REMINISCING ABOUT MY DAYS AS A  
KINDERGARTEN SUBSTITUTE TEACHER, AN  
ELEMENTARY EXPLANATION OF HAFA & 2MP  
AND YOUR FAQ'S CONCERNING FEDERAL LOAN  
MODIFICATIONS AND SHORT SALES**

My third favorite job of all time was kindergarten substitute teacher. Each Friday during law school (there were no classes scheduled on Friday), the local school district would call me at 5:00am and tell which school to report. Upon arriving, and after a few words of encouragement from the principal, the door slammed and I was responsible for the lives and educational progress of twenty-five young children. Those days at work were a priceless experience. I would read stories to them. We would spend hours making pictures that went on their parents' refrigerators. Naptime was tricky, because I was not allowed to sleep, and was jealous that the kids got a thirty minute nap. The most interesting time was recess.

As a substitute teacher, your role is to keep an eye on your class while they integrate with their other school classmates. The other teachers were not helpful. They spent the recess, gossiping. Topics of discussion included:

“Should I marry this guy, even though he drives a Dodge Stratus?”

“I have been dating this man for a year, but he will not divorce his wife.”

“Did you see the Oprah episode yesterday?”

Given the stimulating conversation offered on the playground, it was easy to keep track of my kids, making sure that they did not get into trouble. “Johnny, put your gloves on. David, stop calling Kimberly a ‘witch.’ Stephanie, stop chasing Ronald.” I interacted with the kids for only seven hours (public schools in the Midwest passionately support all-day kindergarten), but when they behaved badly, it was frustrating. However those moments of achievement in their lives...the first time they got a homerun in a kickball game; when they made a clay pot that they proudly took home to mom and dad; and the moment they met one of their friends that they would have their entire lives...those moments are sublime.

Many years later, I experience the same feelings about my clients. Distressed borrowers, developers and (especially) my realtors & brokers often test my patience. I know that they are trapped in a playground with bigger, more experienced kids. I also recognize this is an uncertain time for them, and that sometimes they have to find their own way. But more than anyone else, I want them to succeed. I want their dreams to come true. No matter how many times I warn my clients, sometimes they do their own thing and make predictable mistakes. But when my clients achieve their goals, no one is happier for them than I am.

On March 4, 2009, the Treasury Department began the Home Affordable Modification Plan ("HAMP"). HAMP was supposed to save millions of homes destined for foreclosure. There is only one thing wrong with HAMP: **the lenders must be sued in order to comply with HAMP requirements**. Loan modification companies are crooked and inexperienced in communicating with banks; most realtors and brokers cannot perform a simple short sale; and the Arizona Association of Realtors took way to long to create a standard form (called Short Sale Advisories) that are legally worthless, and truthfully exist to protect realtors and designated brokers (albeit poorly).

But this advice I have offered consistently in the last year is accurate: **Hang in there. The HAMP program will get better.** On April 5<sup>th</sup>, the HAMP program got better. Two new loan programs, HAFA and 2MP (I do not know who creates these stupid abbreviations) will allow distressed borrowers viable ways to avoid foreclosure and realtors the ability to successfully complete short sales. Notice I said nothing about getting the lenders to cooperate with borrowers or realtors. But I will also discuss some of the common tricks lenders use to keep you out of HAMP, HAFA and 2MP.

### **Home Affordability Foreclosure Alternative ("HAFA")**

I suspect that HAFA was a program that the National Association of Realtors spent billions of dollars in lobbying fees to create. Realtors are not earning commissions unless short sales occur. Any realtor will complain that they keep faxing sales contracts to the lender for a short sale, and the lender rejects them. Why? I will explain later.

**HAFA is a program whereby if a borrower is denied a HAMP loan modification or fails to make all of the HAMP loan modification trial payments, then the borrower may apply for HAFA.** If the borrower meets the HAFA criteria (primary residence, hardship, loan prior to January 1, 2009, etc.), then the lender **must** send the borrower the "minimum net proceeds" (the exact minimum price) that the lender **must** accept in a short sale. After that written number is sent to the borrower, the lender may not foreclose on a borrower for a minimum of four months, and a maximum of twelve months. **After a short sale is completed you also receive**

**\$3,000 from the Treasury Department. Your 1<sup>st</sup> and 2<sup>nd</sup> mortgage holder get money from the Treasury Department as well for consenting to the short sale.**

Rejoice!!! You will know the exact price your lender will accept on a short sale. **The trick is the get your HAFA price first, then hire your realtor.** When marketing primary residences, it is pointless to hire a realtor and find qualified buyers, if you do not know the price that the lender must accept. Realtors, in turn, must revise their business strategies to ensure that their prospective clients have filed HAMP applications; been denied; and have applied for HAFA. Your most-successful realtors will have listing signs in the front yard that say "HAFA Price Approved By Lender."

**2<sup>nd</sup> Mortgage Modification Program ("2MP")**

Many borrowers would never consider a HAMP loan modification. Sometimes I hear, "even if a modification would reduce my mortgage payment \$50 – what is the point?" Now emerges the ultimate motivator.

2MP is the latest federal program. Its voluntary lender participants include Wells Fargo, Bank of America, Citi and Chase. Under 2MP, once a borrower's first mortgage is modified under HAMP, the borrower can apply for a modification of their second mortgage. **The second mortgage holder must either modify the second mortgage, or agree to accept a lump sum payment from the Treasury Department in exchange for fully-extinguishing the second mortgage (i.e. paying it off completely).**

The basic criteria for 2MP:

- 1) The second mortgage is on your primary residence.
- 2) You have started the HAMP trial period payments or your HAMP modification has been made permanent.
- 3) The second mortgage was entered into before January 1, 2009.
- 4) Second mortgages must have a unpaid principal balance of greater than \$5,000.
- 5) Third/fourth/etc. mortgages are ineligible.
- 6) Modifications must be completed by December 12, 2012.

Now I have your attention. Your choices: 1) Modify your first and second mortgages under HAMP and 2MP; 2) Sell your home under HAFA and receive \$3,000; or 3) Lose your home to foreclosure and potentially get sued by your second mortgage holder.

**But My Lender Is Not Cooperating With Me...Why? The Media, Local Realtors, Self-Proclaimed "Short Sale Experts" And The State's Curiously-Celebrated "Short Sale Task Force" Claim That The Lenders Lose Money In A Foreclosure**

I have warned you for the last year. If you continue to "work" directly with your lender, your modification will most-likely fail, and I have zero sympathy for you. Until Arizona creates formal licensing and regulations for loan modification companies, the attorneys will just have to keep you all afloat.

Your lender is not cooperating with you, because your lender makes more money when they foreclose on your home. The average lender will sell your foreclosed home for 60% of the outstanding loan balance. Most of you have federally-insured loans. After the foreclosure, the lender will file an "insurance claim" with the Treasury Department to recover up to 80% of the original loan balance. For you mathematicians out there (I got sick of math after Advanced Calculus), the lender **makes** an average of \$75,000 per foreclosure. Oh, one more thing, the proceeds that the Treasury Department pays to the lenders, those funds are **your** tax dollars. Can you handle one more epiphany? Channel 3, 5, 10, 12 & 15 refuse to explain this concept to you either because they are not as smart as they proclaim to you, or (more likely) the local media receives an obscene amount of their advertising dollars from the banks. **THAT IS WHY THE LOCAL MEDIA TELLS YOU TO WORK WITH YOUR LENDER.**

**What Are The Most Common Ways That My Lender Has Tricked Me Out Of Receiving a Modification Under HAMP?**

Where to begin...

- 1) Informing you that you must miss mortgage payments to qualify for a HAMP modification.
- 2) Tampering with the standard HAMP application and subsequent documents, representing them to be standard federal forms, but in reality increasing your liability and waiving your HAMP rights you otherwise have with you lender.
- 3) Stating to you on the telephone that you make too much money to qualify for a HAMP modification.
- 4) Claiming that they have not received your HAMP application.

- 5) The most popular one: Not approving your HAMP application or denying the application in writing (as expressly required by the Borrower Notices provision of HAMP), but commencing with the foreclosure anyway.
- 6) Approving your HAMP trial payments, but illegally increasing the payments in the permanent modification after you have made all three trial payments.
- 7) Claiming that your HAMP modification is not permanent until the lender signs the documentation.

As you can deduce, all of these lender claims are intentionally FALSE.

### **But Why Didn't You Mention Any Lender Tricks Concerning HAFA or 2MP?**

IF YOUR HAMP APPLICATION IS NOT DENIED IN WRITING, THEN YOU CANNOT APPLY FOR HAFA. IF YOUR HAFA APPLICATION IS NOT APPROVED IN WRITING, THEN YOU CANNOT APPLY FOR 2MP.

That will be the lenders' blueprint strategy. I can hear them now at the congressional hearings. "We have not approved many distressed borrowers for HAFA or 2MP, because very few have qualified for HAMP." Brilliant!!!

### **Can My Realtor Assist Me With HAMP, HAFA and 2MP?**

No. The HAFA program was announced by the Treasury Department in November 2009 (Treasury Supplemental Directive 09-09). Of the approximately 80,000 licensed brokers and realtors in Arizona, not a single one of them could explain HAFA to me – or even knew what it was – in the preceding five months.

Imagine a program that might save their industry, six months to prepare for it, and not a single broker or realtor could explain the process or even knew about it.

**The exact steps that you must take when attempting a HAFA short sale:**

**1. Attempt to get HAMP approval. 2. If you are denied under HAMP, then obtain HAFA approval. 3. Only after you receive the HAFA price from the lender should you hire realtor. 4. Short sell your home.**

**But you must proceed in that specific order. Any other way will get you into trouble.**

If you would like a prediction, I anticipate defending realtors and brokers in lawsuits, because they failed to inform their clients HAMP approval is required before sellers can get the HAFA short sale price.

### **I Am Upside Down On My Home. Why Won't You Just Tell Me To Walk-Away From My Home And File For Bankruptcy?**

Some people, I do. But I also know that your next mortgage rate is predicted to be at least 15%. You are most-likely walking away from a mortgage that is at most 7%. You stand to lose two assets: a home and a ridiculously-low interest mortgage.

### **What About The New Foreclosure Program Mr. Obama Mentioned Last Week?**

Generally speaking, if you are unemployed, then you can file an application that prevents your lender from foreclosing for a period not to exceed six months. The trick is that you have to be on unemployment, and that can take some time. Moreover this federal program is voluntary, and the lenders are not volunteering to participate at this time.

### **What About All That Money The Federal Government Is Giving Arizona To Combat Foreclosure?**

Do you honestly think a state that is bankrupt can effectively manage \$125,000,000 of your federal tax dollars? I hope some excellent state programs are established. But I would be shocked if anything occurred until October.

### **What Does The Local Media Have To Do In Order To Establish Any Credibility Whatsoever Concerning Their Reporting About The Mortgage Crisis?**

It is probably too late for any local journalist to establish credibility in their reporting on these issues.. But a gigantic step in the right direction would be to post the following link that directs distressed borrowers to **free** HUD-approved foreclosure counselors.

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=AZ>

Until every newspaper and television website displays this link, conspicuously, you may conclude that the local media actively supports the lenders and unlicensed loan modification companies, and wants you and your family to be

thrown out on the street – just be sure to take your computer and television with you.

### **Why Won't The Attorney General Close Down The Loan Modification Companies?**

That would be a question for Mr. Goddard. If I recall correctly, Mr. Goddard's office claims that there are no laws restricting loan modification companies in Arizona. Of course, I think that it would be productive to remind Mr. Goddard's office that individuals without a license to practice law in Arizona that negotiate contract rights on behalf of others have committed the unauthorized practice of law. See In re Pleischman, 933 P.2d 563 (Ariz. 1997).

If someone in Arizona performed a surgical procedure on you without a medical license, they would go to jail and be on the news. If someone in Arizona remodeled your house without a contractor's license, they would go to jail and be on the news.

But in Arizona, despite the fact that practicing law without a license is a crime, if you negotiate a loan terms on behalf of a distressed borrower, and do not have a license to practice law in Arizona, Mr. Goddard's office will not investigate you and will not prosecute you.

### **So You Must Be Supporting Dean Martin In The Governor's Race?**

Thus far, Mr. Martin seems memorized as to how money can be raised in bankrupt Arizona. While he is consumed with the sale and leaseback of state buildings and suing the federal government for housing illegal immigrants, he seems to miss the obvious: Instead of reducing the staff at places such as the Arizona Department of Financial Institutions and Arizona Department of Real Estate, perhaps triple the staff. With all the con artists committing illegal acts in Arizona, if there were more investigators to expedite those cases, more fines would be issued and the Arizona Attorney General's Office could initiate civil suits. The monies received in both actions would make Arizona the wealthiest state in this country. A little oversimplified, but a guaranteed way to generate ridiculous amounts of revenue.

Just some thoughts from a one-time substitute kindergarten teacher.

### **So Who Do You Want To Be Arizona's Next Governor?**

Seriously, my St. Louis Cardinals just started their season. There are currently on a pace to win 162 games. And I am worried about their bullpen and bench production.

Even after one game, I want them to trade for the San Diego Padres' closer. You all watch local politics. I will continue watching my Cardinals.

Did I answer all of your questions? Probably not. But like I said, the federal programs are getting better. Until the President signs the Executive Order, requiring that all mortgages must be reviewed by lenders for HAMP qualification before collection and foreclosure action commences, attorneys will be forced to fight with clients' lenders and defend realtors and brokers that are sued by their distressed sellers.

Class dismissed.