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MAKE A DECISION RIGHT NOW AS TO WHETHER
YOU WANT TO SAVE YOUR HOME:
TEN GENERAL GUIDELINES TO HELP YOU

Where will you be one year from now? Will you own your home or rent an apartment? Will you file for bankruptcy or begin to rebuild your savings and retirement?

When I ask clients that question, many give me the obvious answer: "I do not know." **That answer is unacceptable!** So many things in life are uncertain and out of your control. Despite what you may have experienced, you do have some control about what happens to your home and your mortgage. The problems most people face result from: a) wasting valuable time; b) failing to gather proper information; c) neglecting to consult with qualified attorneys; and d) just generally not knowing what to do.

Most of the decisions made when dealing with home mortgage issues become last-minute, emotional decisions, driven by the manipulation from lenders, "loan modification companies" (whatever those are) and trustees that really do not care about you, so long as they get as much money as possible from you.

There really is no mystery to what you have to do when facing a home mortgage problem. The problem is no one wants to tell you what to do. The mystery confuses seniors, working professionals, people with decades of education and hard-working people with lots of life experience. After meeting with people from just about all walks of life, I think it is time simply to tell everyone what to do.

The purpose of this newsletter is to assist you in understanding what is currently going on with your lenders and loan modifications. It is my hope that you will refer to these ten guidelines, and make the best decisions for you and your family.

- 1. THE MOMENT YOU REALIZE THAT YOU WILL NOT BE ABLE TO MAKE A MORTGAGE PAYMENT, IMMEDIATELY CONTACT AN ATTORNEY AND SCHEDULE A MEETING.**

Drama and suspense are to be enjoyed in film and television, not in your daily life. So many people do not make a mortgage payment or two, and do not understand the consequences and time deadlines. Others call the lender and are advised by the lender to miss a few mortgage payments in order to qualify for a loan modification. By the time

six months pass after you miss your first payment, you have lost your home and are out on the street.

You will never spend any better money in your life than meeting with a attorney for an hour. Before you make any decisions concerning your mortgage, know the pros and cons of your possible choices. Attorneys are not reinventing the wheel. The story you have to tell and the problems you face are something that they have seen. Take the surprise and uncertainty out of your life. Know what your options are; go home and talk to your family; and make the decision about your home mortgage that benefits you.

2. DO NOT CONSULT WITH ANY ATTORNEY THAT PRACTICES IN THE AREAS OF BANKRUPTCY, DIVORCE, DUI OR CRIMINAL LAW.

As an attorney that represents real estate agents and brokers, a little known duty of mine is to bail out my clients when they are arrested for suspicion of a DUI. My role then is to assist them with the consequences they face from the Arizona Department of Real Estate. But I do not represent them in their DUI trial, or negotiate a dismissal or lighter sentence with the prosecutor. While I know a little about criminal procedure and have worked for three federal judges, those things do not make me a DUI attorney. I simply send my clients to the best DUI attorneys for assistance.

With a slowing economy, attorneys are scrambling to practice in areas they have never worked, but deem lucrative. Qualified attorneys that are capable of assisting you in mortgage problems have backgrounds practicing: real estate, commercial transactions, banking and finance or commercial litigation. As I told you in a past newsletter, loan modifications and forbearance agreements are nothing new for these attorneys. They have been working on these issues for decades. In the best of economic times, loans are renegotiated and modified.

What does a divorce or criminal attorney know about mortgages? It takes more than airing a television or radio commercial, claiming that you specialize in loan modifications to be qualified. Worse still, if you see a bankruptcy attorney claim that they do loan modifications, run away from them!!! Why? Every legitimate bankruptcy attorney in Arizona is swamped with clients – they do not have time to effectively work on loan modifications. A bankruptcy attorney that claims to do loan modifications wants you to file a bankruptcy, not get a new loan. They just figure if you will file for bankruptcy anyway, then why not make some extra money from your failed loan modification attempt.

You should decide during your initial meeting with a attorney whether bankruptcy is the best choice for you. If it is, I will just refer you to a few bankruptcy attorneys. (**Editor's Note:** while the Google has decided that my firm practices in the area of bankruptcy law, It does not. All bankruptcy cases are referred to experienced bankruptcy attorneys. If I hire a bankruptcy attorney (yes, I am looking for one), I will let you know)

3. REPEAT AFTER ME: UNDER NO CIRCUMSTANCES SHOULD YOU TRUST OR RELY ON WHAT YOUR LENDER SAYS TO YOU OVER THE TELEPHONE.

Probably the thing that annoys me most about our human nature is our willingness to believe what someone tells us on the phone. If you have retained a attorney in the past, you may have talked to them on the phone and then received a letter from them that memorializes what you just talked about. Has a lender ever done that for you? Has a loan modification company?

Lenders and “loan modification companies” (whatever those are supposed to be) will say anything to you on the phone. Our human nature is to be comforted by what is said to us, and forget the details a day later. Or worse, the lender says something that you remember; you rely on the promise; and the bank never follows through. In a potential foreclosure matter, time is not your friend. You do not have time to waste, and you cannot risk a dirty lender changing their mind on what they promised you.

4. NEVER CONSULT WITH OR HIRE A LOAN MODIFICATION COMPANY.

There really is no such thing as a loan modification company. It was a figment of someone’s imagination – created out of thin air. If you do not believe me, then call the Arizona Department of Financial Institutions (they license mortgage brokers and loan officers) and tell them that you are interested in getting a loan modification license. They will tell you it does not exist. Why would you risk your family’s future and your home on a stranger with a colorful website, but no license to modify loans and no state regulatory authority monitoring them?

5. IF YOU INSIST ON NEGOTIATING DIRECTLY WITH YOUR LENDER, THEN RECORD EVERY SINGLE TELEPHONE CONVERSATION.

When you call your lender, they are recording the telephone conversation. When my law firm sues a lender, I ask for the recordings of your telephone conversations. The firm does this in order to learn, with certainty, what your lender told you.

But you do not have to wait until you sue your lender. Record their conversation, and tell them that, “for training purposes, I may be recording this conversation.” Please consult your local electronics store for the proper devices. Alternatively, if you cannot afford the recording device, then take thorough notes during the phone calls with the lender. If you are called on your cell phone and are not in a position to take notes, then tell the lender to call you at a specific date and time – when you can record the conversation or take notes.

6. IF YOU SEND A HARDSHIP LETTER AND FINANCIAL DOCUMENTS TO YOUR LENDER AND DO NOT RECEIVE A WRITTEN RESPONSE FROM THEM THAT YOUR MORTGAGE WILL BE MODIFIED WITHIN TWO WEEKS, THEN YOUR LENDER'S ANSWER TO YOU IS LIKELY "NO".

The lenders deal with hardship letters and financial documents from distressed borrowers every day. This process is no mystery to them, and they have institutionally-developed mathematical formulas that will instantly tell them exactly what loan modification they can offer you. But lenders also instruct their staff to deliberately delay offering loan modifications to you. Why?

The lenders have calculated that they will make more money from you, if they wait until the last possible moment to offer to a loan modification. Under the threat that you will lose your home, it is their hope that you will give them as much money as possible. If their gamble is unsuccessful and the lender is forced to foreclose against you, the lender concludes that they would have been forced to foreclose against you anyway.

7. IF YOU HAVE RECEIVED A NOTICE OF TRUSTEE'S SALE, YOUR ONLY WAYS TO SAVE YOUR HOME ARE EITHER TO SUE YOUR LENDER AND TRUSTEE, OR FILE FOR CHAPTER 13 BANKRUPTCY.

Life can be complicated. When you receive a trustee's notice, it becomes simple. If you want to save your home, you have to sue your lender. Legitimate claims include: a) violations the lender committed when qualifying you for the loan; b) lender misrepresentation on your loan application; c) state and federal violations in your promissory note and deed of trust; d) the lender misrepresenting to you that they will offer you a loan modification; e) failure to properly follow trustee sale procedures; f) and numerous other transgressions the lender or "loan modification company" (whatever that is) committed against you.

Filing for bankruptcy may offer a "fresh start" and even stop your foreclosure. However, the risk in filing a Chapter 13 bankruptcy, aside from destroying your credit for ten years, is that you still have to propose a viable payment plan for a court-modified mortgage. Even worse, you will have to agree to payment plans with all your creditors. While amounts owed are reduced and payments terms are renegotiated, it hardly counts as a "fresh start". Again, that initial consultation with an attorney is critical, prior to serious contemplation about filing for Chapter 13 bankruptcy.

8. IF YOU HAVE HIRED A LOAN MODIFICATION COMPANY, FIRE THEM IMMEDIATELY AND DEMAND A REFUND. THERE IS NO SUCH THING AS A LICENSED LOAN MODIFICATION COMPANY.

I discussed this in more detail in Guideline No. 4. I have to mention it again. LOAN MODIFICATION COMPANIES ARE NOT REGULATED IN ARIZONA. THERE IS NO SUCH THINGS AS AN ARIZONA-LISCENSED LOAN MODIFICATION COMPANY. DO NOT WASTE YOUR TIME AND MONEY ON THEM.

9. IF YOU WANT TO STOP A FORECLOSURE OF YOUR HOME, THE LAWSUIT AND INJUNCTION MUST BE FILED AND SERVED TO THE LENDER AND TRUSTEE BY 5:00PM ON THE LAST BUSINESS DAY BEFORE THE SCHEDULED DATE OF THE FORECLOSURE.

Again, our love with movie and television dramatics does not apply in the foreclosure world. There are no "It's a Wonderful Life" moments where your attorney goes to the foreclosure sale and delivers the lawsuit to the evil trustee, stopping the foreclosure, just in time. All the magical things that your real estate or bankruptcy attorney can do for you will never occur unless that lawsuit and injunction (or bankruptcy petition) are both timely filed with the Court and served to the lender and trustee. See A.R.S. §33-811(c). That statute also warns that you lose all your litigation claims and defense, if your lawsuit is not filed by that date and time.

Many distressed borrowers on think about suing someone after they lose their home to foreclosure. By then, legally-speaking, it is too late.

10. IF YOU DO NOT DEMAND A LOAN BALANCE PRINCIPAL REDUCTION, THEN YOUR CHANCES OF GETTING A LOAN MODIFICATION ARE BETTER.

I understand that you want a lower loan balance. It is less money to pay back. However, often in life, you have to give something to get something. At the end of the day, lenders really do not care how you pay back your loan. They just want you to pay back your loan. If the lender's choices are you suing them for fraud, or extending you loan to a conservative 30-year or 40-year loan at a fixed rate, what do you think they will do?

It may frustrate you to know what attorneys do for you when communicating with your lenders. They ask for the same things that you would request, or have requested, from your lender. So why do lenders ignore you and your loan modification company. Honestly, I think it is because they do not fear or even respect you. It could also be that

lenders believe that they can get more money out of you, just because you are scared about the future and the unknown.

Are there other issues to address when dealing with home mortgage problems? Definitely!!! I have not even discussed HOA liens, lawsuits against builder/developers that sold you your home and acted as the original lender, applicability of the Arizona's Anti-Deficiency Statute; and the dangers to co-signers on loan.

This is a lot to read. I would encourage you to print this newsletter and place it on the refrigerator. When you sit at the kitchen table to pay bills, the newsletter will be there for reference. When the lender calls you on the telephone, go to the refrigerator and look at the guidelines for a quick reminder on what to do. This newsletter will not solve all your problems or even single-handedly modify your mortgage. But at least you will have a general idea of what is going on and what steps you should take to protect your family.