Preparing Your Practice FOR A RISE IN DISTRESSED HOMEOWNERS

BY IGOR ROITBURG, MANAGING DIRECTOR, STRETTO & ERIK CLARK, MANAGING PARTNER, BOROWITZ & CLARK

Foreclosures are already rising across the country. Many will undoubtedly turn to bankruptcy for assistance. Debtor attorneys should deepen their understanding of mortgage modifications and how mortgage-modification programs work so that they are ready and able to provide an efficient solution to their clients.

While Chapter 13 has traditionally been used as a "save your home" procedure, data show that distressed homeowners rarely succeed in saving their home. This should not be surprising because Chapter 13 plans impose a higher financial burden on the debtor, as the debtor must both maintain the current mortgage payment and cure the arrears. It is generally not workable to ask a debtor unable to afford the original mortgage payment to pay a larger payment.

A better solution is to seek a mortgage modification where the goal is to ultimately lower the borrower's monthly mortgage payment in a sustainable and realistic manner while recapturing the mortgage arrears into the restructured mortgage. By modifying their mortgage payment, the debtor can afford to stay in their home while freeing up discretionary income to pay other creditors. In the end, all parties—debtors and creditors—benefit.

Prior to 2008, debtor's attorneys largely ignored mortgage modifications in bankruptcy leaving the debtor to their own devices. Results were poor with most debtors finding it very difficult to navigate the modification waters. The Great Recession changed the landscape and exposed the need for debtor assistance. Attorneys became more involved, and several courts adopted programs to provide structure and guidance to the process. As a result, debtors were significantly more successful in obtaining mortgage modifications.

Despite the success of mortgage-modification programs, many debtor attorneys remain reluctant to offer mortgage-modification services. Yet, no one is in a better position to assist a distressed homeowner than a bankruptcy attorney. After all, bankruptcy attorneys already gather much of the same information, prepare similar forms and advocate for an orderly resolution of their client's debts. Representing the debtor in a mortgage modification is a logical next step and doing so has become easier than ever.

STEP ONE
DETERMINE IF YOUR COURT HAS A MORTGAGE MODIFICATION PROGRAM.

Many courts already have mortgage modification programs. These programs establish the rules and guidelines by which debtors and creditors can engage with one another. In many cases, these programs even adopt technology platforms to facilitate the process, making document preparation, exchange and communication more efficient and transparent. For a complete list of approved home-mortgage modification programs across the country, visit https://help.dclmwp.com/en/articles/3586804-court-website-links-by-jurisdiction

STEP TWO
FOLLOW THE COURT PROGRAM.

Most courts have gone to great lengths to spell out how the mortgage-modification process is to work within their bankruptcy court. Simply follow the step-by-step instructions in the program to enroll your client.

If your court does not have a mortgage-modification program, you can always encourage your jurisdiction to adopt a program. In the meantime, you can file an ad-hoc motion which implements the tenets of any other court program, providing similar requirements, efficiencies, deadlines, and transparency, to an individual case. While not the standardized process that a formally adopted program allows, use of an ad-hoc motion can be highly effective and is successfully being utilized in multiple jurisdictions.

STEP THREE
GET PAID.

Almost every court program provides for debtor's attorneys to earn an additional no-look fee for processing the mortgage modification request regardless of outcome. The average no-look fee is $2,000+.

As COVID-related protections and moratoriums expire, millions of homeowners will be vulnerable to defaulting on their mortgage debt and turn to bankruptcy. Bankruptcy attorneys can help manage these needs with greater efficiency by integrating home-mortgage modifications into their practices as a strategy and solution. ■

RETROROCKET/SHUTTERSTOCK.COM