

Bankruptcy Court Set To Require Mortgage Lenders To Negotiate Mortgage Modifications With Chapter 13 Debtors

The Orlando bankruptcy court is preparing to adopt a rule providing for mandatory mediation between homeowners and their mortgage companies to facilitate mortgage modification. Congress rejected a change in the bankruptcy code that would have empowered Chapter 13 debtors to force reduction in their first mortgage principal to their residence's current fair market value. This proposed procedural rule will not circumvent the bankruptcy code and will not force reduction of first mortgage principal. What the rule will do is enable Chapter 13 debtors by motion filed with the court to compel a bank representative with full authority to modify mortgages to meet with the debtor and an independent mediator to negotiate in good faith a possible modification of the debtor's first mortgage terms. The terms and the conditions of the rule are expected to be announced shortly. This bankruptcy rule should be a big help to debtors who want to save their primary residence from foreclosure.

The Florida Supreme Court is requiring mediation in state court foreclosure cases. This state court rule is helpful, but the bankruptcy court rule could be better for homeowners. Before getting to mediate with a bank agent with full authority the homeowner has to be in a foreclosure case. The homeowner first has to stop paying the mortgage for at least three months, wait for the bank to file a lawsuit, hire a civil attorney to answer the lawsuit, proceed for several months in civil litigation, and then at some point, arrange for a court ordered mediation. The result of the mediation is a contractual agreement to modify the mortgage, and the modification usually calls for a few months of trial payments before it is binding.

Chapter 13 mediation should be faster and more definitive. A debtor probably can get an order requiring mediation with their mortgage lender very soon after filing a Chapter 13 bankruptcy petition. The borrower/debtor will not have to miss several mortgage payments and fall farther behind on their mortgage. There will probably be uniform court orders. The bankruptcy rule probably will permit a court order adopting any mediated mortgage modification which order can be recorded in the public real estate records.