What You Need To Know

About Modifying Your Mortgage

Associated Mortgage
Of North America, Inc.

Getting Help Modifying Your Mortgage

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Helping People Keep Their Home

It happened to all kinds of good people. Without warning, they found the value of their home had deteriorated. Their mortgage payment became more than they could afford. Job loss, underemployment, sickness and other hardships depleted their reserves. It became impossible to continue to pay the existing mortgage. They found themselves in the middle of the worst financial storm in the history of our country.

A loan modification is a significant transaction. When handled successfully, it can solve a huge problem for you and your lender. Loan modifications are time hogs. The time required to communicate with your lender is enormous. Keeping the loan modification on track requires patience, tenacity, consistency and a system. Our system makes it difficult for lenders to avoid 'doing the right thing" for you.

There are programs to modify mortgages to lower monthly payments so you can remain in your home. Lenders have begun to realize it makes more sense for you to remain in your home rather than have you abandon it or for it to go into foreclosure. Lenders are working with borrowers to:

- Fix mortgage payments
- Reduce interest rates
- Lower mortgage balances
- Refinance at 90% of the present value of the house

Using All Available Options

As a Florida correspondent lender, we are licensed to negotiate mortgages. Generally, our company is already a correspondent lender with the seller's lender. This relationship makes it easier for us to communicate effectively with your lender. Negotiating effectively means using all the appropriate options which are available to you and found in:

- Freddie Mac Loss Mitigation Guidelines
- Fannie Mae Loss Mitigation Guidelines
- RESPA Section 6
- Fair Debt Collections Practices Act

Recognizing your hardship as one of the nine regulatory hardships is a powerful tool requiring lenders to respond quickly. A regulatory hardship combined with a 'qualified written request' means:

- The lender must respond in 20 business days
- The seller's file gets faster focus

Loss Mitigation Guidelines require lenders to engage in meaningful loss mitigation activity before initiating a foreclosure. Generally, guidelines require foreclosure be initiated only when all loss mitigation options have been exhausted and the borrower does not want to remain in the home. For a lender to not engage in meaningful loss mitigation is for the lender to participate in an unfair trade practice.

With rare exceptions, a mortgage can qualify for a loan modification only if it is delinquent. A loan is delinquent if the payments have not been made or if partial payments were made. If the loan is not paid on time it is delinquent.

Most lost mitigation guidelines provide for several programs to help the borrower and the Lender workout a solution to get the loan back on track.

Repayment Plan

A repayment plan is an agreement that gives the borrower a fixed amount of time to bring delinquent mortgage payments current by paying the normal monthly payment plus an additional amount. A repayment plan can stand alone as a relief option or can be combined with short-term forbearance, long-term forbearance, or a partial reinstatement.

Short Term Forbearance

Short-term forbearance is a written agreement to temporarily let a borrower pay less than the full amount of the monthly mortgage payment, or pay nothing at all during the forbearance period. Payments may be suspended for up to three months or reduced for up to six months from the date of the agreement. At the end of this time, the borrower must bring the mortgage current through payment in full or begin a repayment plan or pay off the mortgage in full. To qualify, a borrower must meet the financial hardship criteria or have a signed sales contract for the sale of the home. Freddie Mac's approval is not necessary.

Long-Term Forbearnce

Long-term forbearance is an agreement to temporarily let a borrower pay less than the full amount of the mortgage payment, or pay nothing at all during the forbearance period of up to twelve months from the date of the agreement. At the end of the forbearance period, the borrower must either bring the mortgage current, begin a repayment plan or pay off the mortgage in full. Long-term forbearances are typically granted when

- the property was damaged by a disaster, causing financial hardship
- a borrower is waiting for an outstanding major medical claim, causing financial hardship
- a borrower is deceased and the estate is in probate

Loan Modification

A loan modification is a written agreement between the servicer and the borrower that permanently changes one or more of the original terms of the note. Some modifications include:

- reducing the interest rate
- changing the term
- fixing interest rate
- type of mortgage
- capitalizing the arrears

However, no write-off or permanent reduction of the unpaid principal balance is allowed. The Borrower must show:

- financial hardship
- an allowable reason to warrant the modification

- stable income to support some level of monthly payment.

Mortgage Assumption

A hardship mortgage assumption permits a qualified applicant to assume both the title to the property and the mortgage obligation from a borrower who is currently delinquent in the mortgage payments or in imminent danger of default. The current borrower must show financial hardship.

Deed In Lieu of Foreclosure

A deed in lieu of foreclosure is a workout option in which a borrower voluntarily conveys clear property title to the Lender in exchange for a complete discharge of the debt. The servicer must determine that no other workout options are appropriate and the property has not significantly deteriorated.

Aside from relieving you from the time to maintain contact with lenders you can count on our support to let you know:

- the mortgage will qualify for a loan modification
- the mortgage restrictions for loan modification
- you will qualify for a loan modification

Our Fee

Our fee is in two parts. An initial $500 application fee plus 1% mortgage brokerage fee. The fees are fully defined in a Mortgage Modification Fee Agreement that is Florida Statue 494 compliant.

Application Fee

The application fee is due only after we have communicated with you Lender and know you, the mortgage and the property will qualify for a loan modification. The $500 application fee is not refundable.

Mortgage Brokerage Fee

The mortgage brokerage fee is 1% of the existing mortgage. It is payable when your Lender agrees to payment plan for a loan modification. You will be able to pay the brokerage fee in 6 monthly payments.

Our Loan Modification Process

There is a process and procedure for modifying a mortgage. The process varies slightly from lender to lender. In general, 50% of mortgages follow Fannie Mae or Freddie Mac loss mitigation guidelines. Knowing the loss mitigation guidelines is a significant part of the process. A short sale is a form of loan modification because the lender is being asked to modify your loan with a lower balance so the house can be sold

Step 1 Determine available options

Getting your lender to communicate and negotiate with us is the first step. Your authorization will allow the lender to communicate with us. It will let us get the name of the investor for your mortgage and the available loss mitigation options. Once we know your lender is open to a short sale we will help you prepare a loan modification application. Generally, it takes 2 to 4 business days from the day we fax your authorization to your lenders before your lender can communicate with us about your mortgage.

Step 2 Prepare Application and Submit Application

The non-refundable $500 loan modification application fee is due only when your Lender confirms they are open to a modification for your mortgage. At that point we will begin helping you to prepare a loan modification application. It generally takes 20 business days from the time a Lender receives a complete application, to assign your application to a negotiator for review.

Application Preparation

An application must meet both regulatory requirements and lender loss mitigation guidelines. The guidelines vary from lender to lender and for individual mortgages. Lenders modify mortgages on a case by case basis and we will assist you in preparing a:

- detailed personal financial statement.
- hardship letter
- arms length sale certification
- short sale request
- seller's estimate of value

Hardship Letter

There must be a hardship to qualify for a loan modification. A Borrower is considered to have an involuntary inability to pay if he or she does not have the ability to make the monthly payments. Hardships are based on an involuntary reduction of income due to:

- Business Failure
- Casualty Loss
- Unemployment
- Curtailment of Income
- Distant Employment Transfer
- Death in Family
- Death of Mortgagor
- Illness in Family
- Illness of Mortgagor
- Divorce
- Military Service
- Interest Rate and Payment Adjustment
- Fraud

Feedback about your hardship letter is important. You can count on us to give you useful feedback in reviewing your hardship letter.

Application Submission

Once your application has been prepared, it will be sent to your lender. Every page on the application will be identified with your loan number and name. Two important tasks remain after the application package has been sent to your lender.

Confirm receipt of the application

Lenders often lose or misplace documentation. Follow up calls are made to the Lender requesting verification they have received the documentation and have included the documentation in their file. Missing documentation is resubmitted and reconfirmed. Often, several calls must be made until we get confirmation your documentation was received.

Verify completeness

As loan modifications are approved on a case by case basis we will confirm the completeness of the application with your Lender. Should additional documentation be required, we will help assemble it, transmit it and verify it has been received.

Transaction log

Every interaction with the lender is logged into our system. A detailed record of the date, time and contact person is maintained for application. The log prevents your lender from fostering misinformation while allowing us to enforce the lender's commitments. It prevents lost time from conflicting directives and information by individual lender employees.

Step 3 Getting the lender to focus on the file

Lenders are overwhelmed with loan modification requests. Lenders are dealing with almost 8,000 foreclosures a day. The total number of requests for loan modifications is much higher. Many loss mitigation departments have to deal with more than 10,000 fax messages a day. Getting the lender to focus on your specific file is a vital part of the short sale process. Two techniques to get your lender to focus on your file are the Qualified Written Request and a forensic audit of the mortgage.

Qualified Written Request

The Real Estate Settlement Procedures Act provides for a privileged communication between you and your lender. It requires the lender to respond within 20 days of the receipt of your request. Used in conjunction with a regulatory hardship, a qualified written request can:

- Force the lender to accept an application for loan modification
- Force the lender to focus on a application for loan modification
- Suspend, delay or stop foreclosure activity
- Suspend the requirement of the borrower to make mortgage payments

Forensic Audit

Often, there are TILA and RESPA violations in your closing documents. Making the lender aware of the violations helps to create focus for a loan modification application.

Step 4 Application Acceptance

The next step in the process is to get the Lender to accept the application for a loan modification. Generally, it takes up to 20 business days from the time the application is accepted for review for the Lender to decide if a borrower and mortgage qualify for a modification. Often, with the acceptance of a modification application, a lender may suspend foreclosure activities. This removes the threat of foreclosure and allows the borrower time to complete the modification without the threat of foreclosure.

Step 5 Special Forbearance Plan

For most mortgage guidelines, qualifying for a loan modification requires the mortgage to be current and a current on time payment history for the loan. This is accomplished by using a special forbearance plan. It will allow the loan to become current and create an on time payment history for the mortgage. The forbearance plan has two features:

- A monthly payment the borrower can afford.
- Four to six payments.
- A balloon payment for the balance of the arrears.

The monthly payments create the necessary on time payment history. The balloon payment brings the mortgage current. A second payment plan may follow the first payment plan. The second plan generally has a monthly payment very close to the payment in the modified mortgage.

Step 6 The Modification

Everyone knows 'it's not over 'until it's over'. Expect our support to continue until the final modification is signed. Lenders are plagued with confusion and mismanagement even at the close. Count on our help to be certain the final mortgage terms are consistent with prior agreement and understanding.

Modification Review

Hidden, new and additional lender fees sometimes find their way to a loan modification. Making certain the modification is consistent with the commitment the lender has given us will protect you.

Modification Fee

The final agreement may include a Lender processing fee. Generally, the processing is between $300 to $500.

How to Communicate With Your Lender

The company that collects your mortgage payment is a loan servicing company and is generally different from the company that owns your mortgage. Loan servicing companies handle the operational aspects of mortgage lending. They collect mortgage payments, credit those payments, send reminders when payments are overdue, assess late charges, establish escrow accounts for the payment of taxes, hazard and flood insurance, and private mortgage insurance. They pay out taxes and insurance premiums when due, and account for all of the above to the

investors who own the loans. They also are responsible for managing loss mitigation when a loan gets in trouble. This can include collection activities, loan workouts, and, if necessary, foreclosure. Some even manage the foreclosed property.

Servicing of mortgage loans has become big business. A servicing company typically collects a fee for managing and collecting mortgage payments for the investor that owns the loan. Investors pay servicing companies additional fees for initiating foreclosure and loss mitigation. Servicing Companies are debt collectors. Any information you share with them will be used by them to collect money from you for their investor.

Lender Correspondence

It is important to respond to all correspondence you receive from the Lender servicing your mortgage. Before responding, please allow us to review the correspondence. You can count on us to help you respond appropriately. Please send us a copy of any correspondence you receive from them so I might help you with a response. Email or fax us a copy of the correspondence as soon as possible.

Lender Telephone Calls

Communicating with the Lender serving your mortgage is important. An open line of communication will require their cooperation. As with any negotiation process, the best results are achieved when using a single point of contact. We suggest you accept all calls from your Lender. Answer telephone calls from the Lender servicing your mortgage. Thank them for calling. Tell them you:

- "welcome their calls"
- "encourage them to call"
- "want to cooperate in every way possible"

The Fair Debt Collection Practices Act requires you provide the mortgage servicing company with information to confirm your name, social security number, address and telephone number.

Please do not share information about your financial situation. Direct all their questions to us. When asked for information about, your mortgage modification application, income, expenses or any aspect of your mortgage, please refer your Lender to us.

Right of Offset

Generally, a bank may take money from your deposit account to make a payment on a separate debt that you owe to the bank, such as a mortgage loan, if you are not paying that loan on time. The bank may take funds from one account to settle a debt in another account if both accounts are with the same bank. This is called the right of offset. In some situations, the bank can exercise the right of offset without letting a customer know in advance that it is going to do it. They have a right of offset from the following accounts:

- any account in your name,
- a joint account with you as a joint owner
- an account in someone else's name where you are 'authorized to sign checks' on the account.

When accepting a mortgage, a customer enters into a contract with a financial institution. This contract may give the institution the "right to offset" the mortgage debt from the customer's bank account. If your bank withdrew funds from your account without your consent to pay an

overdue mortgage payment, you should look at your look at your mortgage agreement and the mortgage note to see if it includes a “right-to-offset” clause. You should also talk to your branch manager or service centre for information about your financial institution’s right-to-offset policy.

Preventing a ‘Right of Offset’

Your lender cannot exercise a right of offset if your bank account is with a completely different financial institution. For example, if you have a mortgage with Bank of America there is no “right of offset” for Bank of America when your checking and savings accounts are with a local bank not owned by Bank of America.

Deficiency Judgment in Florida

A deficiency is a request by a lender for the borrower to pay the balance of the mortgage.

In Florida, a mortgage foreclosure does not automatically result in a deficiency judgment. Just because the borrower loses property at foreclosure does not mean the borrower will remain personally liable for money owed to the Lender. To obtain a deficiency judgment against the property owner:

- The Lender must wait until after the foreclosure sale
- The Lender has to file a motion for a deficiency after the foreclosure sale,
- The court must hold separate evidentiary hearing on the lender’s request for deficiency liability.

At the evidentiary hearing the mortgage Lender has to show the court evidence that the property value on the sale date was less than the note balance. The borrowers can get his own appraisal or can use the government's tax assessed value as evidence of value. If the property was worth more than note balance on sale date the court will not give the mortgage lender a deficiency judgment against the borrower. The borrower may present evidence of value in the form of a formal appraisal or other less formal opinions of value such as the local government's tax assessed value.

Recent Florida Experience

During the past real estate boom deficiency judgments were uncommon because increasing real estate values brought home values above note balances of defaulting mortgages. Additionally, lenders could take back "upside down" properties and hold them until the rising market made them whole. In the current real estate recession, more lenders may pursue deficiency judgments. Up to this point in the real estate crash few Lenders have been pursuing deficiency judgments. Second mortgage lenders and private lenders are more likely than first mortgage holders to go after deficiency judgments. Even in a weak market, if there is still equity in your property when you relinquish the property through foreclosure you can defend a motion for deficiency judgment. As a practical matter, most real estate attorneys report that few lenders have been pursuing deficiency judgments during the current real estate recession.

Cost of Deficiency Judgment

The lender will only pursue a deficiency judgment if the benefits outweigh the costs. Some considerations are:

- What is the deficiency amount?
- What will be the out-of-pocket costs of collection and court costs to obtain the deficiency judgment?

- What is the likelihood that the judgment will actually be paid?
    - To the extent that the borrower has non-exempt assets to pay the deficiency, the more likely the lender is to try and collect all or a part of the deficiency. In Florida, and probably a lot of other states, exempt assets would include a person's homestead, automobiles, 401 K Plan's, IRA's and other similar retirement accounts.
    - If the first mortgage was 80% or less of the purchase price then there should not be Private Mortgage Insurance on the first mortgage. The cost of obtaining a judgment is greater for the Lender is there is no insurance carrier to support the legal of cost. A second mortgage, generally does not have private mortgage insurance.

A judgment is a piece of paper that says someone owes money to someone else. A lien is created when the judgment is recorded in the county records. However, a judgment lien can only be created on real property. If the borrower does not own real property, the judgment lien cannot attach to anything.

IRS, the1099c and Cancellation of Debt

Mortgage Forgiveness Debt Relief Act

The Mortgage Forgiveness Debt Relief Act of 2007 allows homeowners to exclude from gross income any qualified principal residence indebtedness cancelled during 2007 through 2009. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, may qualify for this relief.

Amount realized from a short sale

If you do not make payments you owe on a loan secured by property, the lender may foreclose on the loan or repossess the property. The foreclosure or repossession is treated as a sale from which you may realize gain or loss. This is true even if you voluntarily return the property to the lender. If the outstanding loan balance was more than the Fair Market Value of the property and the lender cancels all or part of the remaining loan balance, you also may realize ordinary income from the cancellation of debt. The Fair Market Value is the price at which a willing seller and a willing buyer will trade. You must report this income on your return unless certain exceptions or exclusions apply.

Borrower's gain or loss.

You figure and report gain or loss from a foreclosure or repossession in the same way as gain or loss from a sale. The gain or loss is the difference between your adjusted basis in the transferred property and the amount realized.

Amount realized and ordinary income on a mortgage debt. If you are personally liable for the debt, the amount realized on the foreclosure or repossession includes the smaller of:

- The outstanding debt immediately before the transfer reduced by any amount for which you remain personally liable immediately after the transfer, or

- The Fair Market Value of the transferred property. The amount realized also includes any proceeds you received from the foreclosure sale. If the Fair Market Value of the

transferred property is less than the total outstanding debt immediately before the transfer reduced by any amount for which you remain personally liable immediately after the transfer, the difference is treated as ordinary income from the cancellation of debt. You must report this income on your return unless certain exceptions or exclusions apply.

In the past, this cancellation of debt income was reported as ordinary income on Form 1040, Line 21. In order to qualify for relief, the debt must be incurred in the acquisition, construction, or substantial improvement of an individual's principal residence and be secured by that residence. The balance on the loan must be less than $2 million or $1 million for a married person filing a separate return. A refinanced debt is also eligible for the exclusion, but only up to the amount of the old mortgage principal just before the refinancing.

IRS Forms 1099-A and 1099-C

If you receive a Form 1099-A, Acquisition or Abandonment of Secured Property, or Form 1099-C, Cancellation of Debt, for their principal residence, you may be a candidate for this relief. A lender who acquires a residence in a foreclosure or repossession should issue Form 1099-A showing the information needed for the taxpayer to figure the gain or loss to be reported on Schedule D. However, if the lender cancels a debt on a foreclosure and must file Form 1099-C because the amount of debt cancelled is $600 or more, the lender may include the information about the foreclosure or repossession on Form 1099-C instead of on Form 1099-A.

If you receive a 1099-C form from a creditor, you must report the amount of the canceled debt as income to the IRS even though you have not actually received the money. The amount shown in Box 2 of the 1099-C form is the amount that must be reported as income.

Relief from 1099c taxable income

- Short Sale of Principal Residence
- Short sale of rental property. A short sale of rental property does not automatically qualify for an exemption from income tax. The canceled debt is reported as ordinary income. This means all other ordinary expenses and losses can be applied to the income. An account can help you offset the income with expenses to mitigate or eliminate the taxable impact of the 1099c income.
- Exceptions from reporting income: The IRS recognizes five situations where a cancelled debt does not have to be reported as income.
    - Bankruptcy – the debt was already discharged through a bankruptcy proceeding.
    - Insolvency – your total debts exceed your total assets at the time your debt was settled or deemed non-collectable.
    - Indebtedness is due to a qualified farm expense. Indebtedness is due to certain real property business losses.
    - Discharge of your debt was treated as a gift. (Extremely rare)

Insolvency

You are deemed to be insolvent if your total liabilities are greater than your total assets. Completing the insolvency worksheet at the bottom of this document will help you determine if you were insolvent at the time your debt was discharged. For example, if your total liabilities are $8,000 and your total assets at the time are $6,000 you are insolvent in the amount of $2,000. To determine the value of your assets use the fair market value rather than what you paid for them or what you think they are worth.

If a borrower is financially insolvent when he surrenders the mortgaged property to the lender voluntarily or through foreclosure there will be no imputed income. A borrower who files bankruptcy is presumed to be insolvent, so that a bankruptcy debtor cannot suffer imputed income tax liability because the bankruptcy discharges personal liability under a mortgage note.

Helpful tips to avoid problems if you have received a 1099-C.

- If you settle your mortgage for less than the full amount be sure to ask the creditor if they intend to submit a 1099-C form to the IRS.
- The name of the creditor may not be readily recognizable on the 1099-C form. The creditor may have sold the debt to a third party collection agency or the name of the parent company could be listed as the creditor.
- Look to see if the added income received from a debt cancellation will move you into a higher tax bracket. For a taxpayer in the 35% tax bracket in 2005, a $5,000 canceled debt could cost up to $1,750 in additional income taxes.
- You cannot claim that you never received a 1099-C form in the mail. Even if you do not receive a 1099-C form you are expected to recognize ordinary income.

Deemed Sale

A foreclosure or short sale is considered the same as a sale or a 'deemed sale'. Some lenders are issuing Form 1099-A to report the foreclosure on a principal residence but no Form 1099-C. If the taxpayer was personally liable for repayment of the mortgage when the debt was created, Box 5 on Form 1099-A should be checked "yes." The abandonment is reported as a deemed sale of the property on Schedule D. The selling price would be the lower of Box 2, "Balance of principal outstanding," or Box 4, "Fair market value of property." If Box 2 is greater than Box 4, there could be cancellation of debt, which would qualify for the mortgage relief income exclusion.

Form 982

To claim the income exclusion, Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness, needs to be filed for homeowners who receive Form 1099-C for a home mortgage which was partially or entirely forgiven during 2007. Form 982 was revised in February 2008 to add two new lines to accommodate home mortgage debt forgiveness:

- Line 1e, "Discharge of qualified principal residence indebtedness," and
- Line 10b, "Applied to reduce the basis of your principal residence."

If Form 982 is being used as the result of foreclosure on a principal residence to report the exclusion of forgiveness of qualified principal residence indebtedness, only Lines 1e and 2 need to be completed. If, instead of foreclosure, the principle residence was retained and a modification of the terms of the mortgage resulted in the forgiveness of qualified principal residence indebtedness, complete Lines 1e, 2, and 10b. In either case, attach Form 982 to the client's tax return.

> *Example:*
>
> Tom and Ann Spender bought a new home on June 23, 1990, for $70,000. This was their principal residence until Tom lost his job and they fell behind on their payments, eventually losing the home through foreclosure on May 11, 2007. When the couple walked away from their home, they still owed the bank $49,097. Due to the depressed economy, the mortgage company sold the house for $40,000 and cancelled the $12,618

debt remaining on the mortgage that was not satisfied by the proceeds on the sale of the house.

Under the new rules of the Mortgage Forgiveness Relief Act of 2007, they escape reporting the cancellation of debt as income on Line 21 of Form 1040. Instead, Tom and Ann will report this cancellation of debt on Form 982. On Form 982, check Box 1e and enter the $12,618 of home mortgage debt discharged on Line 2.

The foreclosure on the personal residence is treated as a deemed sale for the lesser of the amount of the balance of the principal outstanding or the Fair Market Value of the property. Any gain is eligible for the §121 exclusion if the use and ownership tests are met. Assuming the Spenders' house has an mortgage of $77,382 and the deemed sales price is $40,000, they have a gain of $37,382 on the deemed sale [$77,382 - $40,000 = $37,382]. However, the gain is excluded under Section 121 of the IRS code as long as they owned and occupied the home as their principal residence for at least two years during the five-year period ending on the date of the foreclosure.

Statement of Total Assets and Liabilities To Determine Insolvency

Name:	
SS #:	
Name:	
SS #:	
Tax Year:	
Assets as of (Date)	
Liabilities as of (Date)	

Home(s):		Mortgage(s)	
Auto(s):		Auto Loan(s)	
Bank Accounts:		Consumer Loan(s)	
Personal Property:		Credit Card Debt:	
Stocks & Investments:		Other Liabilities	
Business Interest		Other:	
Other:			
TOTAL ASSETS		TOTAL IABILITIES	
TOTAL LIABILITIES – TOTAL ASSETS =			

The information here is intended to be only illustrative and not intended for your specific individual needs. We recommend you consult a lawyer if you want professional assurance that our information, and your interpretation of it, is appropriate to your particular situation.

people helping people

own a home

Trusted Since 1999

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