



Having Trouble with Your Mortgage?



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and falling real estate prices. Many borrowers who find themselves unable to escape higher monthly payments on reset adjustable mortgages default on their loans or put their houses for sale, further depressing prices. As more borrowers stop making their mortgage payments, foreclosures and the supply of homes for sale increase. This causes housing prices to drop still further, reducing homeowner's equity and making refinancing more difficult. Most of these bad mortgages are the so-called sub-prime loans that were offered to more and more higher risk borrowers between 1999 to 2006. Down payments for first time home buyers became optional and I am sure we've all seen ads for the "no income, no job and no asset" loans. Then there were the interest only adjustable rate mortgages which allowed the home borrower to pay inter-

est only, no principal (during an initial period). Then there was the "payment option" loan in which the homeowner could pay a variable amount, but any unpaid interest is added to principal. Everyone now knows virtually all mortgages have been sold to third parties in the form of securitized instruments which investors of all kinds, including large financial institutions worldwide, purchased based upon the AA and AAA rating of these instruments. When large numbers of these mortgages defaulted, the instruments lost value. The financial institutions which had loaded up on this mortgage debt as an investment, no longer knew the value of these instruments and found themselves under-capitalized and unable to loan. As the flow of money slowed, loans to businesses became more difficult. Coupled with a reduction in consumer spending and the reduced demand for their products, businesses began to lay off employees. The next wave of foreclosures will appear, I believe, in the upcoming year after laid off workers having spent their savings find they are unable to refinance or sell to pay their mortgage debt. While the infusion of cash by central banks can recapitalize banks enabling them to loan, I believe this downward spiral will continue until a way is found to put a floor under real estate values, the other half of the problem.

Where does this leave the individual who is faced with the possibility of foreclosure on their home? Both lenders and borrowers may benefit from avoiding foreclosures. It is a costly and lengthy process for lenders, emotionally and financially devastating for homeowners. Post foreclosure car loans and home

loans will be much harder to come by. Some lenders have offered troubled borrowers more favorable mortgage terms. There are four basic items that can be adjusted to lower monthly payments: (a) a reduction of the interest rate; (b) reduction of loan principal; (c) extending mortgage terms; (d) conversion of variable rate mortgages to fixed rate. A coalition of State Attorneys General and bank regulators has recommended a more automated method of loan modification be applied to large blocks of struggling borrowers. In October 2008, Bank of America announced a more aggressive program intended to help an estimated 400,000 borrowers keep their homes. The program will limit payments as a fraction of household income and reduce mortgage balances. New Jersey has instituted the New Jersey Judiciary Foreclosure Mediation Program which seeks to assist eligible homeowner borrowers whose primary residence is in foreclosure and not in bankruptcy. Under the Program, homeowners meet with HUD-Certified Counselors who evaluate and refer homeowners to attorneys supplied by the Program at no cost to the homeowner,

if eligible. A work out with the lender is attempted, but if unsuccessful, mediation will ensue. There are also proposals to help bankruptcy judges to modify loans in a similar fashion under certain conditions. Loan forgiveness does currently have a down side in that you could be stuck with a large tax bill, since forgiven debt can be subject to income tax. A federal fix will be necessary here.

Case by case loan modification as done now, is time consuming and I don't believe will ever deal with the number of mortgages that need to be revised in a timely fashion. Until large scale modifications are instituted through private lender programs or federal legislation or a combination of the two, individual modification may be the best solution at present. Reinstatement through Chapter 13 of the Bankruptcy Code is also available. It remains to be seen what legislation will be enacted to permit efficient modification of mortgages, but we at Basile & Testa will keep apprised of any changes in this area of law. We are available to consult with homeowners to discuss how these developments may impact you and your peace of mind.



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Robert J. Casella was born in Vineland, New Jersey. Robert is a graduate of the Widener University School of Law and was admitted to the New Jersey Bar in 1977. He is also admitted to practice before the United States District Court to New Jersey and the United States Supreme Court. He has represented and counseled clients in Municipal Court, Superior Court, and Federal District Court. Mr. Casella concentrates his practice in the areas of Wills, Estates, Probate, Real Estate, Zoning, Corporations and Bankruptcy. Prior to joining the law firm of Basile & Testa, PA, Robert was a partner in the law firm of Casella & Casella from 1977-2003. Mr. Casella's professional associations include Cumberland County Bar Association and the South Jersey Business Association.