

ON YOUR SIDE

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An informative presentation from your Pre-Paid Legal District of Columbia/Maryland Provider



FROM THE DESK OF Jeffrey M. Lippman, Managing Partner

Mortgage Crisis

Anyone who has watched the news or has tried to sell a home recently, knows that we are in the midst of what most are calling a mortgage crisis. Foreclosures are reported at all time highs while home sale prices have gone down in almost every market. Pundits agree that there are several events contributing to this situation. They included lenders and mortgage brokers engaging in exotic loans and extending credit to persons who may not otherwise have been credit worthy by offering no interest and low interest loans, which reset after a certain period of time. Some consumers who obligated themselves to these deals were often unrealistic about their ability to repay, or others went to closing without understanding the contents of the documents. Another factor appears to be the bundling of mortgages and reselling them as securities. My observation has been that an additional factor was the speculation in real estate as an alternative investment to the stock market that became popularized, even glamorized, by multiple real estate television shows, seminars, and radio advertisements.

Whatever the cause, the problem is undeniable. We have fielded numerous consultations from homeowners in various stages of financial distress, some include looming foreclosures. Many of our callers have suffered from the loans described above as well as traditional loans, while others were on different sides of the equations in certain private loan deals often including variations on foreclosure rescue concepts.

I have been asked if we have seen a huge upsurge in these types of calls. The answer quite frankly is "no." Our rate of calls on these topics seems consistent with prior years. We believe that is because many of our Pre-Paid Legal Services, Inc., members took advantage of their Title I benefits and chose to have the

firm consult on these matters and review the documents prior to entering into the deals. In some of these cases, we believe that our members decided not to enter into these arrangements and sought other financing. Other members had us review the documents which led to better understandings of the terms and better preparations by our clients to deal with resetting interest rates.

The balance of this column will be an attempt to summarize some of the avenues open to a borrower who is in some type of distress. I cannot emphasize enough that the earlier someone calls us, the better equipped we are to assist them and the more options will likely be available to a borrower. Some of the frequently encountered options are as follows:

1. **Payment** - it seems very simple and straight forward. But believe it or not, some borrowers are able to reinstate the loan but have been prioritizing other debts, or dealing with other issues instead of facing the foreclosure head on. The borrower has an absolute right to redeem a loan by paying it current, along with any accrued allowable costs, prior to a foreclosure. Most lenders need a certain number of business days to get a reinstatement amount to you, but they are open to reinstatement in general.

2. **Refinancing** - borrowers can explore refinancing the existing note with a new note. That would require that either your existing mortgage lender refinance the whole note or you find a new lender willing to refinance the entire note and they will require a new security instrument such as a mortgage or deed of trust. As a practical matter, the further along in the default process one is, the harder it is to refinance.

3. **Short Sales** - a short sale generally occurs when the property is sold and the lender agrees to accept a discounted payoff. This means the lender will release the lien that secures the property upon receipt of less money than is actually owed.

4. **Short Refinance** - this is when your existing lender might agree to forgive some part of your debt and refinance the remaining debt into an entirely new loan.

5. **Special Forbearance** - a forbearance is an agreement made between a mortgage lender and a delinquent borrower in which the lender agrees not to exercise its legal right to foreclose while the borrower agrees to a mortgage plan that will, over a certain time period, bring the borrower current on his or her payments. A typical forbearance agreement is not a long term solution but a short term solution to address temporary financial problems.

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The Tax Man Commeth, by JC AMOS, Esquire

Where do you go when you owe the IRS more money than you could ever possibly pay and you don't know how to keep them from garnishing your wages or levying your bank account. The established procedure to negotiate a settlement with the IRS is to file an Offer in Compromise. The Offer in Compromise is a document which demonstrates to the IRS *one* of the following criteria as justification for your request for settlement:

1. **Doubt as to collectibility** - you demonstrate to the IRS that if you gave them all of the assets you have and all of the money you had left over at the end of each month (based upon what the IRS thinks your living expenses should be) for many months, that you cannot ever pay the debt to the IRS.

2. **Doubt as to liability** - when you can prove to the IRS that there is some reason why you do not really owe the money that they claim is outstanding. Very often this has to do with an audit that was not responded to properly or a dispute as to an audit that was not resolved.

3. **Effective Tax Administration** - effective tax administration has never really been defined but generally the tax payer has to show that the effort the IRS would take to collect the tax would exceed the value of the money returned or it would create other severe economic hardship for the tax payer. The classic example of this is a tax payer with a massive tax debt whose only income comes from retirement accounts. If the IRS were to seize the retirement account, the tax payer would become indigent.

Until about 2001, Offers in Compromise were commonly filed with the IRS and often accepted. The number of filings has dropped considerably since then. There were 113,000 filed in 2001 and 59,000 in 2006. In 2001 the percentage of accepted Offers in Compromise was 34%. In 2006, 59,000 were submitted and 15,000 were approved— 25% acceptance.

Nonetheless this does not make the Offer in Compromise an impossibility. It is the best route for a tax payer who has a large tax liability and little ability to pay it. Here at Weinstock, Friedman & Friedman, P.A., the members of the

Business Team have trained to effectively evaluate for our Pre-Paid members whether they qualify for an Offer in Compromise. The training includes how to challenge denials of OIC's and how to prepare those Offers in Compromise that are more likely to succeed. While the statistics do not favor the taxpayer, if an OIC is an option for you, having representation can increase your odds.

Therefore if you are facing a IRS debt please get in touch with one of our attorneys to discuss whether or not you are a candidate for OIC. Remember if it is determined that you are not a candidate for the Offer in Compromise program we can still assist you in setting up a payment plan with the IRS and fully discussing all of your legal avenues.

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Mortgage Crisis

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6. **Mortgage Modification** - a mortgage modification is when the existing loan is modified by the lender. These modifications can involve reduction of interest rates, extension of the length of the loan, different types of loans or any combination.

7. **FHA Secure Products** - as of August 31, 2007, the President signed an Executive Order to allow HUD's Federal Housing Administration to help an estimated quarter of a million families avoid foreclosure by enhancing its refinancing program. That program went into effect immediately but had several conditions including that the mortgage being refinanced must have been one where a non-FHA adjustable rate mortgage has reset, and the mortgage's payment history must have been current prior to the reset rate. There are other requirements and for more information one may wish to contact the Federal Housing Administration.

8. **Bankruptcy** - bankruptcy may be a last resort option for many borrowers. A Chapter 7 Bankruptcy will generally result in the surrender of the property but will often delay the foreclosure and any subsequent ejection for several months. There are occasions where Chapter 7 Bankruptcy can allow a borrower to retain their home. A Chapter 13 Bankruptcy is designed to retain the home by paying the mortgage as it comes due along with all arrears accrued divided over the length of the plan; typically 36 to 60 months. New proposals in the United States Congress have proposed loosening some restrictions in the bankruptcy code to make it easier for borrowers in Chapter 13's to keep their homes.

9. **Private Sale** - prior to the foreclosure action being concluded, the homeowner can sell the house on the market. However, all liens must be satisfied which usually means that the mortgage lender gets paid in full.

10. **Deeds in Lieu** - some lenders are willing to forebear on their rights to foreclose in exchange for a deed in lieu. That typically means that the borrowers sign title back over to the bank and the bank will not pursue legal remedies

against the borrower. This usually only occurs when the amounts owed are relatively marginal compared to equity and the cost of foreclosure, weighed against the likely auction proceeds. If the costs of foreclosure outweigh likely proceeds, the bank may believe that a deed in lieu is in its best interest.

Again, the above is not an exhaustive list and is only a summary of the more common foreclosure avoidance mechanisms. If you are in a stage of the foreclosure process or believe that a foreclosure may be something that you will face down the line, I encourage you to utilize your Pre-Paid Legal Services, Inc., benefits and contact our consulting attorneys as soon as possible.





TAX TIPS

Under the present law, the availability of IRA owners age 70½ or older to make qualified charitable distributions to charitable organizations is set to expire on December 31, 2007. While Congress may act to extend these provisions, there is no guaranty. Therefore, if you are an IRA owner, age 70 ½ or older, and you wish to make such a distribution, this process must be commenced prior to the end of the year to ensure that the gifts beat the deadline.

The process is typically simple and you need to contact your IRA Trustee or the Custodian. You would inform the Trustee or Custodian that you wish to have a distribution check made out to an appropriate qualified charity. Many large charities also have a gift planning office with people on standby to assist you and the Trustee or Custodian in ensuring that the transactions are completed prior to any deadline.

The rules are fairly simple:

- Donors must be age 70½ or older when the gift occurs and they must own a traditional or Roth IRA. While other retirement plans are not eligible, it is theoretically possible to rollover those plans into IRA's and then the quali-

fied IRA gift rules apply. As a practical matter that may be difficult before the expiration date.

- Only the IRA Custodian or Trustee can transfer gift amounts to a qualified organization. If you take the money and make the gift the money will be taxed as part of your income.
- No charitable deductions are allowed, but transfers to the qualified charity count toward the IRA owners required annual distribution and therefore can reduce taxable income. IRA gifts do not impair deductibility of regular charitable contributions.

The best candidates for IRA giving are those who are over 70½ and own an IRA before the December 31, 2007 deadline. This charitable gift typically is used by taxpayers who use the standard deduction, pay income tax on social security payments, or taxpayers who are subject to tax penalties because they have high adjusted gross income. Obviously these same taxpayers may want to reduce taxes on their estates and such distributions would reduce the gross IRA amounts which would be passed on to the taxpayer's heirs.

Year end tax preparation time is upon us. Before we all get too involved in the Holiday Season, it is appropriate to take a quick review of our financial situation and see if there is anything we can do before the end of the year to minimize taxes.

If you have an ongoing relationship with a tax professional or CPA, now is the time to make an appointment. There are very often things that can be done to minimize the taxes that you will owe for the 2007 year. Below is a list of just some of the things that you should discuss with your tax professional:

•**Capital Gains** There are formulas for how your long term capital gains and losses are netted against each other to determine how much income tax you pay. Review these with your tax professional now to see if you can maximize the benefit, and minimize your capital gain taxes.

•**Deminimus Gifts** The IRS allows each taxpayer to give away \$12,000.00 to any individual or individuals during the tax year. This means that if you have four children you can give each one \$12,000.00 and not have any impact to either you or your children. If you are married you and your wife can give each of the four children \$24,000.00. Now is the time to make those gifts. They cannot be backdated into a prior year.

•**Education Expenses** If you are paying and deducting the costs of enrolling in higher education some times it is best to prepay next year's school fees for the spring term. That allows you to deduct them in 2007 instead of having to wait for 2008.

•**Donations** Remember to deduct cash donations of over \$250, you must have receipt from the charity. A bank record is not enough, so as you proceed with your holiday giving, get receipts.

•**IRA's and Retirement Accounts** Check with your plan supervisors. You may be able to increase your contributions.

•**Check out your flexible spending accounts** Make sure you are not losing money by not spending it before the end of the year.

•**Energy Credits and Purchase of Hybrid Cars** There are a variety of energy credits and credits for specific vehicle purchases. Some of these credits are valid only until the end of the year. If you are considering remodeling or purchasing a new car you may want to immediately meet with your tax professional to determine what advantages are available to you.

•**Depreciation Deductions** If you are the owner of a small business there may be tremendous tax advantages to you under Section 179 of the Tax Code. This is the tax code that lets you expense 100% of the costs of purchasing equipment instead of taking the expenses depreciation over a number of years.

Disclaimer As with all tax advice, the advice given here is general information. It is not guaranteed to apply to every tax situation. That is why we at Weinstock, Friedman & Friedman, P.A., recommend that you contact us and/or your tax professional concerning each of these issues to find out what is the best step for you to make.



CONGRATULATIONS CORNER

Weinstock, Friedman & Friedman:

I have been inspired to send you this correspondence because I wanted to let you know about the operations of your firm and staff, especially Shannon B. Kreshtool. I must say that your staff is extraordinary not only do the personnel display outstanding customer service, the environment has a take action attitude.

I thought I would take this time to let you know about your employee. Shannon Kreshtool that I have direct contact with her on a regular basis since she accepted my case. Shannon is a seamless multi-tasker who also happens to be very efficient and always pleasant and considerate. The amount of time and energy she puts into her job, Shannon always has her clients interest at hear.

I am so impressed with the hard work and her responsibility and considerate attitude, and how she deserves a standing ovation for adding fun and brightening the day of people who know nothing about the law, bur feel comfortable in putting their faith and trust in your employee, I am grateful to have had the opportunity to meet a member of your team.

Truly

Dear ...,

I would like to thank Darlene Davies of your firm for helping me. As soon as I became a Pre-Paid Legal member, I needed your assistance. I had repeated call and was being harassed by Wachovia Dealer Services.

Quite frankly, I really didn't know what to do. All I knew was that there wasn't any basis for the harassment. I thought about changing my phone number or just paying Wachovia just to stop the harassment. Soon after, I received a negative on my credit report concerning this issue. That was the straw that broke my back. Now, I don't know whether everyone that asks for your help gets the quality service that I received, but I HOPE SO.

Ms. Darlene Davies treated me like she'd known me all my life. It was a welcome to finally talk to a real human being on the other end of the phone. Ms. Davies followed the process to the very end. Always returning my phone calls and writing the proper letters to those establishments that were affecting my well-being. I mean even contacting all credit bureaus concerning my adverse credit rating because of the incident.

It was like a ton of bricks that was lifted off me. Look, I'm single and I've been looking for someone like your firm, loving, caring, kind and want nothing but the best for me! Thank you again with all my HEART!!

Love & Respect

SPOTLIGHT ON

Rebecca Carter-Supervising Attorney

Rebecca Carter joined Weinstock, Friedman and Friedman in July of 2004 as a Title 1 attorney. Prior to joining the firm, Ms. Carter attended Frostburg State University, where she received her bachelor's degree. She received her law degree from the University of Baltimore and was an associate of a small, boutique law firm.

Ms. Carter instantly connected with our Pre-Paid Legal members. She is patient and understanding and is always willing to go the extra mile for our members.

Ms. Carter is one of those rare people who not only has excellent people skills but is also very organized and detail oriented. When the Supervising Attorney positions were created, Ms. Carter was chosen to fill one of these slots. It has been a perfect fit. Ms. Carter is one of the go to people for both attorneys and staff. Her easy manner makes her very approachable.

In addition to serving as a Supervising Attorney, Ms. Carter is our "WOW" customer service trainer. The "WOW" initiative was instituted a few months ago by the Pre-Paid Legal corporate office. Ms. Carter is responsible for motivating and training our entire firm to deliver the excellent service our members and Pre-Paid Legal Services expect of us. It is easy to learn from her as she leads by example.

We feel very fortunate that she chose to practice law at Weinstock, Friedman & Friedman, P.A.

