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Q&A

Fending Off Foreclosures

You predict the pace of foreclosures will not slow in 2010. Why is that?

There are a lot of reasons. Not all of the adjustable rate mortgages have adjusted out of the artificially low teaser rates. We might be near the end of foreclosures for sub-prime borrowers but there are plenty of loans in the next-to-bottom tier (so-called "Alt-A" and "Option ARM" loans) that the borrowers will not be able to pay. Unemployment has been rising and those people who lost their jobs have been using their savings to pay their mortgages. When the savings run out, they will be in foreclosure.

You say Alt-A loans are the next candidates for foreclosure. What are these and why will we see increased foreclosures?

Alt-A loans are those where the decision to lend was based entirely, or almost entirely, on the borrower's credit score. There was no proof of income or verification of assets. They were attractive to business owners, who often have variable incomes. We will see an increase in foreclosures in this category because the recession is lingering. Alt-A loans were also more likely to have a longer teaser-rate period — five years is common — before adjusting.

You say more foreclosures will be fought successfully because of the industry's "faulty system." What is the faulty system?

The mortgage-backed security industry created a system where loans can be sold repeatedly and quickly and the actual

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owners are insulated as much as possible from the borrowers. Everyone may know there is a default, but only the owner of the loan can enforce the mortgage. The system makes it very difficult, if not impossible, to identify the owner. The industry tries to work its way around this problem by claiming that whoever has possession of the note can foreclose. The possessor of the note is not necessarily the owner.

According to you, there are institutional problems with the wrong parties trying to foreclose on a mortgage. Why are other entities trying to foreclose?

The problem lies in the distinction between the owner of the loan and the possessor of the note. I mentioned that the owners have insulated themselves from the borrowers. Part of that insulation is having someone else do the dirty work of foreclosing. The owners don't relinquish

ownership; they put someone else in possession of the note and that someone else claims that possession alone gives them the right to foreclose.

Why is it going to be difficult to attain mortgage modifications in 2010?

This is a complicated issue. The party actually doing the foreclosing is usually answerable to the owner of the loan. The owner of the loan is often answerable to investors who purchased mortgage-backed securities. Mortgage modifications aren't necessarily "safe" because the owner of the loan or the investors may claim that a modification wasn't the best thing for them. Foreclosure is safer because that is what the agreements between the various parties most likely require when there is a default. Another problem is that the departments within the lenders that handle foreclosures and modifications are separate. The foreclosure department does not hold up foreclosure so that the modification department can work something out with the borrower. The modification departments are overwhelmed and have trouble making timely decisions because of the volume. Some borrowers effectively will be denied modification simply because the modification department could not get to their request in time.

The statutory mediation program might help because whether mediation continues depends on whether the mediator thinks something can get done and the lender cannot complete the foreclosure while the case is in mediation. ■