

# The Hanging Paragraph

Bankruptcy eNewsletter by Attorney Gregory A. Holbus

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## Are Mortgage Modification Agreements a SCAM?

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### Mortgage Modification Agreements Rising in Popularity as an Alternative to Foreclosure, but Seem to Have Major Risks

There is more than one way to skin a cat, or so they say. When facing foreclosure, you have several options. Your simplest defense is that the mortgage company's allegation that you defaulted on your loan payments is false, but of course, that defense only works if it's true. You might also have a defense under a Truth-In-Lending (TILA) violation, consumer protection laws, or some other state contract law. But when the truth is that you're simply behind on your mortgage payments, there are really only three ways to save your home, aside from paying the reinstatement amount.

The first option is the one I advocate – Chapter 13 Bankruptcy. The bankruptcy creates an automatic stay which stops foreclosure proceedings, and the Chapter 13 offers a mechanism to cure the mortgage arrears over a 3-5 year repayment plan.

A second option is to refinance your mortgage, which basically means that a new mortgage lender buys out the mortgage from the original lender, effectively refreshing

### Lou Jones Breakfast Club

Atty. Gregory A. Holbus is tentatively scheduled to give a presentation to the Bankruptcy, Insolvency, and Consumer Right's Section of the Wisconsin State Bar in October. The topic will be about giving proper notice to creditors in adversary and other bankruptcy proceedings and sorting out who's who in a world full of shell companies and subsidiaries.

The presentation will be given during the Lou Jones Breakfast Club, which is a monthly meeting of the local bar of creditors and debtors attorneys, in memory of former Chapter 13 Trustee Lou Jones. Hosted by Judge Susan V. Kelley, these presentations are held from 8:30 a.m. to 9:30 a.m. on the second Tuesday of each month.

the mortgage and bringing the homeowner current. The catch with this option is trying to find a lender who will give you the new mortgage after your mortgage defaults have ruined your credit rating.

The third option is loan modification, and in response to the foreclosure crisis in America, there has been a tremendous amount of pressure on lenders to explore these options. I've even seen court orders to that effect.

IN THEORY, these things are designed to bring you current on your mortgage and stop foreclosure proceedings by extending the term of the loan and putting the mortgage arrearages at the back of the loan. All of this happens only if the homeowner jumps through hoops for about 4-6 months, by way of making several mortgage payments (typically at an escalated amount), tons of paperwork, and other procedures.

Now, I confess, I am not an expert as to what these procedures are, the conditions that the lenders are operating these programs under, nor the criteria for qualification. I doubt there are any experts in this area. However, I have had an alarming number of cases present themselves to my office – horror stories of homeowners who have, evidently, followed the terms of the loan modification agreement to the letter, only to be denied the modification – seemingly by no greater cause than the mortgage lender's whims. I'm not sure what mechanisms, if any, are in place to force the mortgage companies to honor these agreements.

Tragically, many homeowners are over-extending themselves trying to qualify for these modifications, putting themselves in a worse financial situation, and getting nothing out of the ordeal. Worst of all, the foreclosure process is still running in the background, and by the time the homeowner realizes that the loan modification is not going to go through – bam! – they're facing a sheriff's auction of their home in a couple of weeks, with virtually no time to prepare to file a bankruptcy case.

Am I saying that you should never explore loan modification? Of course not. But I am issuing this warning. If you are intent on saving your home, have a back-up plan and don't wait until the last minute to get it lined up and ready to go.

## **PLEASE BE CAREFUL WHEN CONSIDERING A MORTGAGE MODIFICATION AGREEMENT TO STOP FORECLOSURE OF YOUR HOME**

*It's seems more evident by the day that mortgage lenders are exploiting mortgage modification options as a way to waste precious time in the foreclosure process and to distract you from other, more reliable options to save your home.*

I may be biased, but I believe that Chapter 13 is the safest and most reliable way to stop foreclosure. It's true, on a case-by-case basis, there are some homeowners whose financial circumstances preclude a Chapter 13 Bankruptcy from being a viable option. However, as an attorney who specializes in Chapter 13 and preventing foreclosure, I can give you a fairly good estimate of how a Chapter 13 Bankruptcy will play out in your case, even before you pay a dime of legal fees. The biggest advantage with bankruptcy is that you are not at the mercy of the mortgage company. So long as you comply with and abide by the bankruptcy laws and rules, you are in control of your future.



## Improvements at Holbus' Law Office

I was hoping to hold off on publishing another edition of The Hanging Paragraph until the Supreme Court issued its decision in *Hamilton v. Lanning*. That hasn't happened yet, but as obsessed as I am with this case, you guessed correctly that I check the court's web-site daily to see if a decision has been rendered. You'll know when I do. But I felt that the mortgage modification story was too important to withhold for another month. In the meantime, I thought I would share with you some changes at our office.

On the tech side, we have just implemented new network hardware designed to keep our databases even more secure and inter-office file and software sharing faster and more reliable. New automated reports have been added to help us better manage our case load and provide our clients with valuable reminders.

We are in active negotiations with a new title company that may be able to augment our current Document Retrieval Services (DRS) and retrieve deeds, mortgages, and tax bills for any real estate that you might own in northeastern Wisconsin. The DRS is designed to retrieve several of the documents needed to file a bankruptcy case, saving our clients time, money, and stress.

For those who are seeking debt relief but do not qualify for bankruptcy or do not wish to file bankruptcy, we are about to start offering Chapter 128 services, which is a form of debt consolidation and repayment governed by Wisconsin state law. Although it lacks many of the benefits afforded by federal bankruptcy law, the qualification requirements are more relaxed, and the costs are much cheaper.

We will soon be offering EFT/ACH as a new method to paying legal fees, as a convenient alternative to mailing or dropping off cash, checks, or money orders.

Finally, our web-site is about to get a major overhaul in the next couple of weeks, in terms of both style and content. We're very excited to unveil it, and we hope that you find it informative and assuring.



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