

Statement of Lewis D. Wrobel

Congress of the United States  
House of Representatives  
Committee of the Judiciary  
Subcommittee on Commercial and  
Administrative Law

**Role of the Lending Industry in the  
Home Foreclosure Crisis**

To appreciate the current actions and attitudes of the lending industry in the foreclosure crisis, it is necessary to take an historical perspective. Prior to the 1990's the great majority of loans to purchase homes were made by local banks and credit unions. The officers of these institutions usually served for many years and were knowledgeable about the community and often about the borrower who was seeking the home mortgage. If the borrower faced financial distress, he could contact the bank officer who certainly knew the property and the community and often knew the borrower. A workout of the loan might be accomplished by deferring payments, lowering the interest rate, or entering into a forbearance agreement. If that was not feasible, the bank might arrange a deed in lieu of foreclosure which would allow the borrower to surrender the property in full satisfaction of the debt and not suffer the damaging effect of a foreclosure on his credit record.

Beginning in the 1990's, and continuing to the present, the mortgage lender and/or mortgage assignees are not the local banks or credit unions but rather commercial institutions such as Wells Fargo, Wachovia, GMAC, Citimortgage, Chase Home Finance, to name a few. At these lenders, for better or ill, there is often a high turnover of personnel. At times no loan officer is present as the mortgage loan is obtained through a broker and there is no contact with a representative of the lender. Usually the lender does not have an office in the locality, hence communication is primarily over the phone and occasionally over the internet.

My clients have often complained of the frustration over not having a contact person, or

anyone who would listen to their problem. It is common for the borrower to provide copious financial information to the lender only to wait weeks or months for a response for a loan modification request. During this time, the lender may very well be proceeding with a foreclosure action.

A responsible person who foresees a job loss or an oncoming financial crisis and who has never missed a payment, will receive no response to a loan modification request from a lender. It is the policy of nearly every major lender not to discuss a loan modification until the borrower is at least three (3) payments in arrears.

I may illustrate these problems with three (3) case studies from my practice:

- I. A retired woman in her 70's with a solid pension from her work in municipal government requested a loan modification. The home has been in her family for her entire life. She filed and confirmed a Chapter 13 Bankruptcy case but soon realized that she would need mortgage relief. To make her request for modification, Litton Loan Servicing requested pay stubs, bank statements and a financial statement. After review of her information, an offer was made to reduce the interest rate from 7.5% to 6.5% with the missed payments being added to the principal. The principal therefore was increased by \$23,000.00 and the maturity date was extended. The monthly payment, including escrow, however, remained at \$2,229.05. Therefore, she received no relief. She is a senior citizen with a fixed income. She has tried to enter into a further dialogue, but her telephone calls are not returned. She enlisted the assistance of a local housing agency, Neighborhood Works, but the agency has received no response.

- II. A mortgage broker in his late 40's suffered a precipitous decline in his earnings with the housing crisis. He is the sole support of his wife and five (5) children, two (2) of whom have special needs. He is currently under the protection of Chapter 11, but the mortgagee of his home received Relief from Stay and he will need Loss Mitigation to save the residence for his family. Pursuant to the request of Wells Fargo Home Mortgage, he timely provided a financial statement, pay records, bank statements and a hardship letter for their evaluation.. He, like others, would wait weeks into months for an answer. On August 19, 2009, the borrower received a letter demanding a payment of \$9,048.59 on or before September 10, 2009. At the time this offer was being made, the lender served the borrower with a foreclosure Summons and Complaint on September 2, 2009, eight (8) days prior to the date for the partial reinstatement payment. The modification offer that was made would increase his monthly payment from \$4,413.18 per month to approximately \$7,900.00.
- III. A family of six (6) filed a Chapter 13 case to save their home. The husband worked as a mechanic in private industry and the wife worked for a local college. Their youngest child and has a severe gastro-intestinal problem. The wife left her job to care for the child. Although the Chapter 13 plan was confirmed, they would not be able to make the payments. The case was converted to Chapter 7. Ocwen, the mortgage servicer, received relief from the Automatic Stay, and proceeded with its foreclosure action. Approximately two weeks prior to the foreclosure sale date, the debtor husband received a \$60,000.00 loan from his employer; more than enough funds to bring the mortgage current. After numerous requests, Ocwen finally

provided my office with reinstatement figures. Their numbers, however, were far in excess of the amounts due and owing as evidenced by its proof of claim in the Bankruptcy case. When I spoke with the Ocwen representative, who was an outsourced contractor in another nation, and pointed out the discrepancy, Ocwen still refused to postpone the foreclosure sale unless an amount of approximately \$32,000.00 was paid to Ocwen with no guarantee that the sale would be postponed. Fortunately, the Bankruptcy case was still open and we did obtain a Temporary Restraining Order to stop the sale. Also, the threat of Bankruptcy Court sanctions allowed us to obtain a very favorable settlement wherein the debtors were able to save their home.

Other abuses have been a failure by Chase Home Finance in one case to apply an escrow balance of \$11,815.43 in 2007 to the missed payments. Chase Home Finance, however, allowed the escrow surplus to grow to \$40,215.99, but still refuses to apply the surplus to mortgage arrears or to pay it over to the borrower. In that same case, Chase Home Finance failed to recognize online payments made by the borrower from his Chase bank account.

In a confirmed Chapter 13 case unsophisticated debtors were ready to sell their home. The lender, through its servicer had filed a proof of claim. Prior to the closing a payoff letter was sent to the borrowers with an amount nearly \$19,000.00 greater than the proof of claim. Fortunately, the debtors' case was still open and there was a forum to address this discrepancy. The lender had a few thousand dollars of legitimate charges, but was forced to reduce its payoff amount by approximately \$12,000.00 to the correct amount.

A program has been instituted in the Bankruptcy Courts for the Southern District of New

York to encourage Loss Mitigation negotiation. The program has been spearheaded by the Hon. Cecelia G. Morris, the Bankruptcy Judge at the Poughkeepsie Court. The program is open to individual debtors in Chapters 7, 11, 12, and 13 who are seeking to save their homes. The program only applies to residences. The debtor may request Loss Mitigation and the Court will enter an order requiring the parties to exchange information. Pursuant to the terms of the Order, the creditor must announce a contact person for the debtor. The Court shall hold status conferences to monitor the progress of the negotiations. Although the Court cannot compel the creditor to alter the terms of the loan, the program has achieved numerous agreements. It has certainly made lenders more responsive to the debtor's plea for relief. In one recent case, the lender even reduced its interest rate to 2%.

I most often appear in Judge Morris' Court. I believe that her persuasive leadership has been instrumental in getting the parties to talk seriously about modifying the loan. The Loss Mitigation Program is one that other Courts, both federal and state, may wish to adopt. Attached as an exhibit to this statement is the form for a Loss Mitigation Request by the Debtor and the form of the Loss Mitigation Order.

/s/ Lewis D. Wrobel  
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