

GARRET T. BARNES, ESQ.
ADRON H. WALKER, ESQ.
JEFFREY S. GOETHE, ESQ.
ROBERT A. HOONHOUT, ESQ.
MATTHEW B. TAYLOR, ESQ.
JENNIFER M. LAROCOCO, ESQ.



MAIN OFFICE:
3119 MANATEE AVENUE WEST
BRADENTON, FL 34205
TELEPHONE: 941-741-8224
FACSIMILE: 941-708-3225
EMAIL@BARNESWALKER.COM

BARNES WALKER, CHARTERED
ATTORNEYS AT LAW

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WILL THERE BE NEW HOPE FOR HOMEOWNERS?

A SUMMARY OF THE HOMEOWNER AFFORDABILITY AND STABILITY PLAN

On March 4th, homeowners got new details from the Department of the Treasury on President Obama's Homeowner Affordability and Stability Plan, first announced last month. The Plan is designed to help up to 7 to 9 million homeowners struggling with the current lending and housing markets.

The Plan contains two new programs: (1) The “Making Home Affordable” refinance program, and (2) The “Making Home Affordable” modification program. This newsletter offers a summary of these two programs. The Plan also calls for the Department of Treasury to increase funding for Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs) that own or guarantee over 50% of all U.S. mortgage loans.

THE “MAKING HOME AFFORDABLE” REFINANCE PROGRAM

Mortgage-loan interest rates are still low, and homeowners who are currently paying higher interest rates, or who have adjustable-rate mortgages set to readjust to higher rates, could save money by refinancing at today's lower rates. But, with tighter lending requirements now in place, many banks will not allow homeowners to borrow more than 80% of a home's *current* value when they refinance.

Unfortunately, because of the drop in home prices, many borrowers – especially those who purchased a home in the last 10 years or so – now owe far more than 80% of their home's value. In many cases, they are “under water” – that is, they owe more than their homes are worth.

The “Making Home Affordable” Refinance Program is designed to help approximately 4 to 5 million eligible homeowners refinance at today's lower rates, even if they owe more than 80% of their home's value.

Who Is Eligible?

To be eligible for the Refinance Program, borrowers must:

- Be refinancing their primary residence.

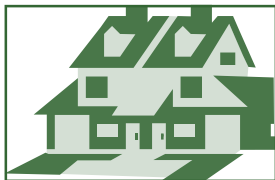
- This means that investors, speculators, and borrowers looking to refinance a second home are not eligible.
- Be current on their mortgage payments.
 - Being “current” is defined as not having been more than 30 days late on any payment during the last 12 months.
- Owe no more than 105% of their home's current value on their existing first mortgage.
 - For example, homeowners whose homes are currently worth \$200,000 must owe no more than \$210,000 on their first mortgage.
- The 105% limitation applies only to first mortgages, so homeowners can owe more than 105% on their first and second mortgages combined. But, second mortgage holders will have to agree to stay in second position behind the new mortgage, and borrowers will have to prove that they can afford to make the payments on both the new loan and the existing second loan.

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- Have a mortgage loan owned or guaranteed by Fannie Mae or Freddie Mac.
 - Borrowers who aren't sure whether they have Fannie or Freddie loans can find out by calling 1-800-7FANNIE and 1-800-FREDDIE between 8 a.m. and 8 p.m. EDT or by visiting www.fanniemae.com/homeaffordable and www.freddiemac.com/avoidforeclosure.
- Show that they will be able to make the payments on the new loan, as well as the payments on any existing second loans.
 - This means that homeowners who have lost their jobs or who have no income will not be eligible for the Refinance Program.
- Refinance before June 2010, which is the current end date for the Refinance Program.

How Will the Refinance Program Work?

- All loans obtained through the Refinance Program will have fixed interest rates and 15 or 30 year terms. Rates will be based on the prevailing market rates at the time of the refinance and may vary by lender.
- The Refinance Program will not reduce what borrowers owe. Homeowners who already have low, fixed interest rates may not get much benefit from a refinance.
- The Refinance Program will not help homeowners get cash out of their homes. Only the costs associated with the refinance itself (like appraisal costs and title charges) can be added into the loan.
- Homeowners who think they are eligible for the Refinance Program and would like to take advantage of it should contact their lenders. Be aware, though, that this is a new program, and many lenders are still working on the procedures to implement it. Before calling, homeowners are advised to gather all relevant information. This includes information on monthly household gross income (such as recent pay stubs or other proof of income), most recent income tax returns, and account balances and monthly payments due on any second mortgages, credit cards, car loans, student loans, and all other loans.
- Homeowners who are not eligible for the Refinance Program may be able to modify their loans through the "Making Home Affordable" Modification Program.



THE "MAKING HOME AFFORDABLE" MODIFICATION PROGRAM:

The "Making Home Affordable" Modification Program is a \$75 billion initiative designed to help 3 to 4 million homeowners at risk of losing their homes. The Program allows eligible homeowners to modify their mortgage loans to create more manageable monthly payments.

Who Is Eligible?

To be eligible for the Modification Program, borrowers must:

- Be seeking to modify the loan on their primary residence.
 - Like the Refinance Program, the Modification Program is not available to investors, speculators, or borrowers looking to modify loans on a second home.
- Be at least 60 days behind on their mortgage payments *or* be at imminent risk of falling behind.
 - Homeowners should be prepared to sign an affidavit explaining why they are falling behind; for example, they are facing a significant increase in their monthly mortgage payment, a drop in their monthly income since getting the loan, or a recent financial hardship such as unexpected medical bills.
- Owe less than \$729,750 on their first mortgage loan.
- Have gotten their current loan before January 1, 2009.

- Have a loan with a participating servicer.
 - A loan servicer is the company to which borrowers send their monthly mortgage payments. This may or may not be the same company as the lender that originally gave the loan or that currently owns the loan.
 - To participate in the Modification Program, loan servicers must first sign agreements with the Treasury Department, agreeing to follow the Department's guidelines for the Program.
 - Once a servicer signs an agreement with the Treasury Department, the servicer must offer modifications to all eligible borrowers, unless the servicer's agreement with the lender – the bank or other investor that currently owns the loan – prohibits such modifications. If it does, the servicer is required to use reasonable efforts to get the lender to agree to a modification, but the lender is not obligated to do so.



How Will the Modification Program Work?

- The purpose of the Modification Program is to make borrowers' monthly mortgage payments more manageable. Specifically, a loan modification under the Program must **decrease the monthly loan payment until it is no more than 31% of a borrower's monthly gross income.**
 - For purposes of this calculation, the borrower's monthly loan payment includes principal, interest, property tax and insurance escrows, and any condominium or homeowners' association dues.
 - The borrower's monthly gross income is the amount, before payroll deductions, of any wages, overtime, commissions, tips, bonuses, Social Security payments, annuities, pensions, unemployment benefits, rental income, and any other type of compensation or income.
- The Modification Program establishes guidelines for servicers and lenders to achieve this decrease.
 - The lender must first reduce the interest rate on the note until the monthly loan payment reaches 31% of the borrower's gross income *or* until the rate is decreased to 2%.
 - If, after decreasing the interest rate, the borrower is still paying more than 31%, the lender should then extend the term of the loan. Loans can be extended for up to 40 years from the date of the modification.
 - If the borrower is still paying more than 31% of monthly gross income, the lender must then forbear principal. *Forbearance is not forgiveness.* The borrower will still have to pay the amount of principal that the lender forbears in a balloon payment that will be due when the borrower sells the property or refinances the loan, or when the loan matures.
 - At any point in this process, lenders can decide to forgive principal instead. This would actually reduce the amount the borrower owes on the loan, but lenders are not required to offer this option.
 - Once lenders have reduced borrowers' loan payments to 38% of monthly gross income, the Treasury will match, dollar-for-dollar, the cost to the lender of all further reductions necessary to reach 31%.
- Under the Modification Program, the modified interest rate must remain in place for five years. After that, it can increase by 1% per year until it reaches *the lesser of* the original note rate *or* a rate determined by Freddie Mac by surveying lenders on their current rates. By way of reference, this rate – the Freddie Mac Primary Mortgage Market Survey rate – has averaged 5.1% for the first nine weeks of 2009.
- Loans must be modified on or before December 31, 2012, when the Modification Program is scheduled to end. Loans can only be modified once through this Program.

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SAVE A TREE



- The Modification Program provides incentives for servicers, borrowers, and lenders to participate.
 - Servicers receive an upfront payment of \$1,000 for every eligible modification they complete, with an additional \$500 payment for modifications completed while borrowers are still current. Servicers also receive a payment of up to \$1,000 per year for up to 3 years for every modified loan where the borrower stays current.
 - Borrowers receive a payment of up to \$1,000 per year for up to five years as long as they stay current on their modified loans. This payment goes directly to the lender to pay off the remaining principal.
 - Lenders receive a payment of \$1,500 for modifications completed while borrowers are still current. Lenders also receive dollar-for-dollar help from the Treasury Department in reducing borrowers' loan payments from 38% to 31% of their monthly gross income. Lenders must first reduce payments to 38% on their own.
- Homeowners who think they are eligible for the Program and would like to take advantage of it should contact their lenders. Again, because this is a new program, many lenders are still working on the procedures to implement it. Before calling, homeowners should gather all relevant information, including recent pay stubs or other proof of income, most recent income tax returns, and account balances and monthly payments due on any second mortgages, credit cards, car loans, student loans, and all other loans.

More to Come:

The Modification Program also promises to provide, in the future:

- Additional government payments to lenders to offset losses in the event that borrowers default on a modified mortgage and home prices have declined. This is an additional incentive to lenders to modify loans.
- Additional government payments to servicers and borrowers in the event that borrowers are not approved for a mortgage modification and must "short sell" their home or deed it to their lender in lieu of foreclosure.
- Government payments to second mortgage lenders to pay off and satisfy their mortgages if this is necessary to ensure that the borrowers will be able to repay the modified first mortgage.
- Separate mortgage modification programs for FHA, VA, and rural housing mortgage loans.

If you have any questions regarding either of these programs, please contact us at (941) 741-8224.



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BARNES WALKER, CHARTERED,

was established in 1995 in Bradenton, Florida. With six attorneys, we represent clients in the areas of real estate law; wills, trusts, and probate administration; civil litigation; and business and intellectual property law. Our attorneys have performed over 13,000 real estate closings on all types of properties, in addition to advising clients on short sales, landlord/tenant issues, and land use matters. We have over 48 years of combined experience providing estate planning services. We have handled hundreds of business sales and have 80 years of combined experience counseling clients on the formation and operation of business entities such as limited liability companies and corporations. Our litigation department provides representation on foreclosures, contract disputes, construction law, municipal law, appellate law, mediation and arbitration, and other commercial litigation, with over a quarter of a century of combined litigation experience. For more information on our attorneys, the contents of this newsletter, or any other legal issues, please call us at (941) 741-8224.