

Brown calls on banks, loan servicers to detail plans to stem foreclosures

Contributed by California Attorney General's Office
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LOS ANGELES ‐ Concerned about a "new wave" of foreclosures, Attorney General Edmund G. Brown Jr. today has called on 10 major banks and loan servicers to detail their plans to assist homeowners facing dramatic monthly payment increases on pay option adjustable rate mortgages.

"Homeowners with Pay Option ARMs are sitting on ticking time bombs that the lending industry has the power to defuse," Brown said. "Unless these banks and loan servicers act quickly, hundreds of thousands of mortgages will reset across the state, creating a new wave of foreclosures."

In the third quarter of 2009, California accounted for more than 25 percent of the nation's foreclosure activity, with 250,000 homes receiving foreclosure filings statewide. This is an annual increase of almost 20 percent in foreclosure activity and more foreclosures loom.

California homeowners hold almost 60 percent of the nation's exotic pay option ARMs originated between 2004 and 2008. Approximately one million of these mortgages will reset nationwide in the next four years, resulting in higher payments and a dramatic increase in foreclosures.

Brown believes that the lending industry must be responsive to homeowners and loan modification programs must be expanded.

In October 2008, Brown announced an \$8.68 billion settlement with Countrywide Home Loans, once the largest lender in the county, after the company deceived borrowers by misrepresenting loan terms, loan payment increases, and borrowers' ability to afford loans.

In total, Brown has sought court orders to shut down more than 30 fraudulent foreclosure assistance companies and has brought criminal charges and obtained lengthy prison sentences for dozens of deceptive loan modification consultants.

Homeowners who have been scammed can contact the Attorney General's office at 1-800-952-5225, or file a complaint online at: www.ag.ca.gov/consumers/general.php.

For more information on the Brown's action against loan modification fraud visit: <http://ag.ca.gov/loanmod>.

Brown's request was made in a letter sent to: Bank of America Home Loans & Insurance; Wells Fargo & Company; JP Morgan Chase & Co.; Litton Loan Servicing; ResCap, LLC; Ocwen Financial Corporation; OneWest Bank; American Home Mortgage Servicing; Saxon Mortgage Services, Inc.; and Select Portfolio Servicing. Banks and loan servicers are asked to respond by Nov. 23.

The text of the letter follows.

October 29, 2009

The foreclosure crisis continues to plague California homeowners who are trapped in mortgages with exploding monthly payments. While the economy is beginning to improve, homeowners desperate to save their homes have seen little relief. And analysts predict that foreclosures will continue to worsen, particularly as Pay Option ARMs begin to recast.

Economists estimate that about one million Pay Option ARMs will reset in the next four years, resulting in massive payment shock and dramatically worsening the foreclosure crisis. California, with 58 per cent of all Pay Option ARMs originated between 2004 and 2008, will be the epicenter of this crisis. Systemic plans to modify these loans as they recast must be in place, in order to preserve home ownership and avoid a prolonged and painful recession.

Loan modifications can help many of these borrowers save their homes. To be successful, however, current loan modification programs must expand. The Administration's Home Affordable Modification Program (HAMP) has been slow to get off the ground and will not benefit thousands of Californians threatened by foreclosure, as it does not allow for principal reduction. Yet principal reduction is exactly what borrowers need. Borrowers living in areas with sharp depreciation in housing prices do not have enough equity in their homes to qualify for HAMP. This situation is even more dire for borrowers with Pay Option ARMs, who now owe more on their homes than when they first took out their mortgages.

Poor customer service often is a significant obstacle to effective loan modifications. Homeowners seeking loan modifications continually complain that their lenders and servicers fail to respond to their phone calls; that they are asked to resubmit the same paperwork over and over again; that they are told they will not be considered for a modification unless they are already in default; and that they receive no answer to their request for a loan modification and are left with no option but to short sell their home, go through foreclosure, or file for bankruptcy. Effective customer service systems must be in place to address the next wave of mortgage resets.

The foreclosure crisis and the expected deluge of Pay Option ARM recasts require advance planning on the part of the entire mortgage industry. Given the importance of this issue, we ask that you provide the following information by no later than November 23, 2009:

1. The number of Pay Option ARM loans secured by residential real property located in California that you are servicing (regardless of whether you own the loans).

2. Of the number of Pay Option ARM loans identified above, the number that have negatively amortized, and the average dollar amount of that negative amortization.

3. A detailed explanation of all efforts you have taken to handle customer service concerns of borrowers with Pay Option ARM loans, including any increased staffing and a description of any notices you send or are planning to send to borrowers whose loans are about to reset. For advance notices sent to borrowers, please specify how far in advance of the reset date you send, or plan to send, those notices.

4. A detailed explanation of the loan modification plans you have developed for Pay Option ARM loans. Please state the circumstances under which your plans allow for the reduction of principal, and the possible amounts of principal reduction. If you are not willing to consider principal reduction as part of your plan, please explain why. Please also specify whether you have already implemented your modification plans for Pay Option ARMs or, if not, the time frame within which you expect to do so.

5. To the extent your approach for considering whether and how to modify Pay Option ARM loans has changed since the beginning of the foreclosure crisis, please explain the changes and the reasons for those changes.

We look forward to receiving the requested information and to productive discussions on how to minimize the impact of Pay Option ARM recasts on California's residents and economy.

Sincerely,

BENJAMIN DIEHL Deputy Attorney General

For EDMUND G. BROWN JR. Attorney General