Promises by Banks to Postpone Foreclosure Must be in Writing

May 29, 2012 - If you are trying to stop a foreclosure of your home, the chances are that you have contacted your lender and are trying to work out a loan modification or other accommodation to avoid losing your home. You may have even received an oral promise from the lender that they will not foreclose during the time that you are trying to work out an agreement. But because of a ruling by the US Eighth Circuit Court of Appeals, those oral promises may be worthless. The rule of thumb in this circumstance appears to be that you need to get such promises in writing and both you and your bank need to sign off on them.

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The ruling out of the Eighth Circuit applies to a case in Minnesota. But because many other states have clauses in their credit laws that are nearly identical to Minnesota's, the ruling is likely to have widespread affect.

Just as in the scenario laid out in the first paragraph of this article, in Brisbin v. Aurora Loan Services LLC the plaintiff in the case was trying to work out a loan modification with her lender. She did receive an oral promise that the foreclosure would be placed on hold while the negotiations went on with her lender. But instead of placing the foreclosure on hold, the bank proceeded and took back her home. Ms. Brisbin filed suit as a result.

The case started out in the Minnesota state court system in 2009 and was moved to the federal court system in 2010 by the defendants. The ruling the case by a three judge panel was unanimous. The ruling notes that Minnesota law requires that credit agreements be in writing to be enforceable and that they be signed by both the lender and the borrower. The court found that because foreclosure is a method by which lenders enforce debts, a promise not to foreclose is a credit agreement. That means that any such promise needs to be in writing for it to be enforceable.

Minnesota is far from the only state to have laws that require credit agreements to be in writing. This means that the effects of this single ruling are likely to be felt across the country. The ruling is immediately enforceable in Minnesota as well as any other state with similar laws that falls within the US Eighth Circuit. Outside of the Eighth, the ruling is likely to be used for instructional purposes by other US circuit courts.

The case should serve as a warning for anyone involved in credit negotiations with lenders. This includes credit negotiations that may not involve foreclosure. In order for any credit agreement to be valid, you should assume that it needs to be in writing. So if you get your lender to agree to specific terms, you need to ask that they place those terms in writing. And if they don't, then you should assume that you don't have an agreement.

byJim Malmberg
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