

## MODIFYING LOANS AND THE DECISION-MAKERS

by [Howard Kozloff](#) 10/11/2010

A recent [editorial in \*The New York Times\*](#) lamented the latest housing market woes, this time resulting from various banks' disregard for, or inattentiveness to, a legal foreclosure process. As the article correctly states, "It is hard to be shocked."

Further fueling uncertainty is of immediate concern, adding another layer of doubt to what may end up proving to be a formerly nascent recovery. While President Obama is calling for more thorough analysis to determine if foreclosure or modification is more prudent, and a provision in the Dodd-Frank bill authorizes government aid for troubled homeowners to assist with legal services, neither gets to the heart of the problem.

Homeownership is not an inalienable right, and should be reserved for those who are in the financial position to shoulder the burdens that come with the supposed pride. The banks reviewing loan applications should be the final bastion of culpability in assessing prospective buyers' financial wherewithal.

This creates a moral conflict in many cases, as banks make money by lending money. In the interest of financial stamina, however, the banks have overlooked the simple fact that they only make money by lending money if the borrowers can pay them back. While there will always be some percentage of borrowers that fail to pay back their loans, it is all too well documented now that those levels are excessively high in today's economic environment.

Most troubling is the realization that many bank REO departments (for "real estate owned," the class of property that goes back to lenders upon unsuccessful foreclosure auctions) are not staffed by real estate minds. While it is not fair to make a wholesale categorization of REO departments nationwide as real estate deficient, there are multiple cases where simple real estate fundamentals are unknown.

Examples here include law firms, architecture firms and real estate advisory firms being engaged to teach real estate 101 to national banks' REO departments. There have been cases where those making the decisions between lending or not lending, or foreclosure or modification, are unable to effectively comprehend sale and purchase agreements, site plans and floor plans, inspection reports or market analysis documents. This is not to suggest that these are bad people. But, as clerks, statisticians and analysts who are not educated or trained in the intricacies, or even general principles of real estate, they simply do not get it. How can such fragile issues with widespread economic and social ramifications be addressed by anything less than experts?

In other words, these last bastions of culpability are unable to perform the simple tasks that even a reasonably responsible borrower should comprehend. Banks are in the business of making money, and that, in and of itself, is not a crime in a capitalist economy. But they should at the very least properly train those who are making decisions on lending millions upon millions of dollars to aspiring, whether ready or not, homeowners.

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