

## Forum

## Setting Up CAMP

By Wayne Avrashow

The recently released report by the Office of the Comptroller of the Currency and the Office of Thrift Supervision does not pull any punches: The financial industry's efforts to modify home loans are "inadequate." The upward spike in California foreclosures should spur the governor and the California Legislature to enact a legislative remedy with an alternative path: mandatory mediation prior to the foreclosure sale, a California Alternative Mediation Plan.

CAMP's non-binding mediations would preserve California's "non-judicial foreclosure" regulatory scheme and the "no deficiency" protection for borrowers.

Federal Deposit Insurance Corp. chairwoman Sheila Bair has termed the recession "housing-led," and stabilizing the state's housing market is a critical building block toward economic recovery.

CAMP would mirror the existing mediation process in Los Angeles County courts. Similar to civil cases when the court can order the two parties to non-binding mediation, the lender of residential, owner-occupied property would transmit a notice of mediation to the borrower concurrent with its notice of default. It would be the borrower's election to participate in the mediation.

Since the lending community has been overwhelmed by the vast quantity of defaulting loans, the existing roster of experienced court-appointed mediators would be utilized for loan modifications, and expanded with neutral, experienced real estate attorneys and mediators assigned from nonprofit agencies.

The federal report disclosed that loan modifications, long favored by Bair and others, have not occurred in any meaningful manner. The report's numbing blur of statistics concludes that less than one-third

of modified loans reduced the monthly payment by 10 percent or more, and a shocking one-third actually increased the monthly payment.

It is no surprise that a majority of such half-heartedly modified loans were in default within six months. But meaningful modifications succeed. More than 75 percent of borrowers who received a modification that reduced their monthly payment by greater than 10 percent remained current on loan payments six months later.

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**CAMP mediation would be non-binding, all confidentiality rules would apply and the borrowers could represent themselves or retain counsel.**

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More than a quarter of our nation's foreclosures have occurred in California, and the trend is worsening. Two main qualifiers in the Obama administration's \$75 billion housing plan will fail to cure California's dire situation.

First, 2 million California homeowners are "underwater" on their loans, many of which are by amounts greater than the plan's loan refinancing limit of 105 percent of the home's value. Second, only loans owned or guaranteed by Fannie Mae or Freddie Mac are eligible. Those federal agencies have maximum loan values varying by county, from Los Angeles' \$729,750 to \$423,750 in Modesto. But because of California's inflated real estate values and their correspondingly high loan amounts, many homeowners' loans exceed those limits.

In theory, lenders could resolve this

issue without mediation. There is no valid economic or social rationale why lenders would desire to acquire homes via foreclosure. The inadequate response by most lenders is perversely confirmed by the proliferation of loan modification services offered by both legitimate law firms, and by instant "modification experts."

Only a short time ago, lenders held their own loan portfolios. Today's loans, however, are sold, packaged, divided and credit rated for global sale. Most lenders' tepid response to this crisis consists of computer generated telephone call centers, which focus on debt collection rather than substantive loan modifications. Lenders' modification personnel are not authorized to resolve the complex financial and legal issues that arise in many loans. Mediation can replace the confusing maze of lender's form letters and rigid guidelines, with meaningful dialogue between borrowers and lender representatives who are authorized to modify loan terms.

Loan mediation programs have been adopted in New Jersey and Florida. Foreclosures in these two states are administered by the courts in a "judicial foreclosure" process, and the mediation is comfortably retained within the judiciary's control. Nevada, a nonjudicial foreclosure state like California, has adopted a modification program, but is struggling to fund it.

Details for CAMP are best resolved in the legislative process, but we can offer a basic framework. Only owner-occupied, primary residences would be eligible. The borrower would have a limited time to elect to participate once he or she receives the notice of mediation, which would be scheduled 30 to 60 days thereafter. If the borrower elects to participate and attends the mediation, a brief forbearance time period would be added to the foreclosure process.