

A Closer Look at

THE LAW



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E-Newsletter
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Cunningham Dalman, P.C. is a full service law firm located in Holland, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

When a Man is Drowning, Throw Him a Life Preserver

By: [Randall S. Schipper](#), Attorney at Law

This is the most difficult environment for homeowners in the past 70 years. Many homeowners can't afford to hang on yet can't sell for enough to cover their mortgage. Some homeowners clearly should not have borrowed what they borrowed. But some were put into riskier mortgages than they could have qualified for because the mortgage broker made more money that way. And many lenders and borrowers thought a 20%, or even 10%, down payment a quaint relic of old times. It is painfully clear that the fallout from the most foolish is hurting even those who were cautious.

The collapse of the US housing market is a major factor in the contraction of lending all around the world so the economy will not stabilize until the housing market does. The Obama Administration is proposing to help homeowners with two plans.

The first is a loan modification program. For those who can demonstrate financial hardship and are behind in payments, the interest rate can be dropped to as low as 2% and payments stretched out to get the monthly payment (principal + interest + taxes + insurance + homeowners or condominium association dues) to 31% of pretax income and all installment debt to 38% of gross income, the standards that used to be required to get a mortgage loan. The loan servicer (the company to which the borrowers make their payment) could be paid up to \$5500 and the borrowers up to \$5000. The servicer would have to waive current late fees and loan modification charges. A pending foreclosure would be suspended during the application process. This program is most helpful for those who stretched a little too far in buying a house, such as by counting on overtime that is no longer available, or those who had to take a pay cut to stay employed, or were sunk by a variable rate adjusting too high. The relief lasts only five years but the hope is they will be able to

refinance or sell in an orderly market over the next few years.

The second is a refinancing program. To qualify, the borrowers must have paid their mortgage on time for the past 12 months, owe no more than 105% of the current value of their home, have their mortgage already backed by Fannie Mae or Freddie Mac (quasi-government guarantors), and have an interest rate higher than current rates (because all the program does is allow the borrowers to refinance to current mortgage rates). The borrowers have to pay all the typical fees to refinance, but the loan servicer and lender could be paid up to \$5500. This program is most helpful to those with an adjustable rate threatening to adjust higher or a balloon payment coming due but, because of lower home prices, would not quite be able to qualify for a refinance on their own.

A third help is working its way through Congress. It would allow bankruptcy courts to reduce the amount secured by a mortgage to the current fair market value of the home, with the remaining balance becoming unsecured debt and most likely wiped out. Such a "cramdown" has been available for commercial loans secured by real estate. This may help some homeowners who are really in over their heads.

One of these programs may help you or someone you know. We can help you evaluate this and navigate the process. I would also note that a good adviser could have seen that some of the loans that have gone bad were doomed to fail but the real estate agents, mortgage brokers, and lenders involved had financial incentives to push the deal forward. In making one of the largest financial decisions in your life, we can help. We do not have a financial stake in the deal closing so can provide advice with only your interests in mind.

Show Me the Money: Financing a Startup Business

By: [P. Haans Mulder](#), Attorney at Law

You probably haven't heard this line from the Tom Cruise movie, Jerry McGuire, during these challenging economic times... Well, it's back for you entrepreneurs! More and more people have heard the calling to start a business after they've lost their job. Starting a business is challenging and one of the most obvious difficulties is finding money to capitalize it. Most people immediately think of a bank for this type of financing. But, banks are reluctant to lend to a startup business unless there is collateral or a high net worth guarantor of the loan. In these days of tight credit, getting a loan for a startup business is even more challenging. At the same time, credit card companies are reeling back in credit limits and banks are reluctant to give second mortgages with home values declining. Friends and family are always an option, but many are in survival mode. Where does that leave you?

If you have been diligent and put away money in a retirement account (401k or IRA), that might be an option. But, as you probably know, these accounts are designed to encourage savings for retirement and penalize early withdrawals. This includes a 10% penalty as well as the amount taken out of the plan being subject to federal and state income tax. This could amount to easily a 40% "hit" on the amount you have withdrawn and wouldn't leave you with much to finance your startup.

Despite these limitations on retirement accounts, there is a way to use these funds to fund a business startup. As you would imagine, there are very technical rules to do this and if the formalities are not followed, the IRS has made it clear that it will penalize

these taxpayers. But, it is a very important financing tool for you to be aware of, especially during these difficult times when other options are few and far between. For more information on how to structure this funding for your business and whether it would be appropriate for you, please contact our office.

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