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proceeding while the debtor is provided an opportunity to both resume the regular payments in whatever amount they may be, and to pay the arrearage through the plan under the supervision of the trustee. Like other judges, I frequently decline to confirm reorganization plans that offer this treatment because they are simply not feasible. If the homeowners did not have the resources to make the mortgage payments before bankruptcy, it is unlikely they will be able to resume those payments plus pay the delinquent amounts.

The human face of this is real. The hardest cases for me are the elderly people who often owned their homes outright, but were lured into an unfavorable refinancing, often by an unscrupulous mortgage broker who has long disappeared. Several weeks ago, I dismissed the case of an elderly African-American widow who had lived in her home for forty years and owned it outright, at least until she was persuaded to do a subprime refinancing to enclose her carport. And in just one morning last week, three families conceded they would not be able to make the payments required under current law in Chapter 13 to save their homes, and surrendered them to their mortgage holder.

In looking at the issues surrounding the current proposal, there are seven points that I would like to make.

First, the suggestion that bankruptcy judges should be able to modify home mortgages in no way suggests that these debts are to be given special treatment. Quite the contrary, they would now be given the treatment provided all secured claims in bankruptcy; their particular exemption from this treatment would simply be removed. Reamortizing and restructuring secured debt is the heart and soul of the bankruptcy process. I do it daily with factories, farms, boats, motor vehicles, vacation homes, investment property – any debt but that secured solely by the principal residence.

Second, this has been tried before in response to an economic crisis and worked well. In the 1980s, devaluation in the farm economy threatened virtually every small farmer in America. No provision of the bankruptcy code provided much relief, in part because the family home was always part of the collateral. Chapter 12, which allowed bankruptcy courts to modify all farm loans, was passed as a response, and has been such a success it is now a permanent part of the Bankruptcy Code. Rather than destroying the farm market, it interposed some rationality and discipline. Once the bankruptcy solution was in place and a few cases decided, the parties had every incentive to resolve their issues voluntarily, so many of these disputes never reached us.

Third, the bankruptcy courts are equipped to deal with these cases with their current staffing. In response to what were overwhelming caseloads, the bankruptcy courts of this country are the most technologically advanced in the world, able to deal with cases and claims electronically and often remotely. There would be a flurry of filings, each court would work out

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its predictable response to these issues, and the market would respond. The secured debt on motor vehicles is reamortized in hundreds of my cases each year, but I rarely have a contested hearing. Debtors' counsel, the trustee, and the car company lawyers know about what my court will do a certain set of facts and agree to it, and this happens in every jurisdiction. Additionally, as a result of BAPCPA, the 2005 bankruptcy legislation, our filings have not reached the levels they were at prior to that time, so we have some "excess capacity," if you will, in our system to handle any additional cases that this provision would generate.

Fourth, our discretion in this area is sharply curtailed already by existing caselaw. The idea that we would (or could) somehow willy-nilly give everyone a 40-year mortgage at 2% interest is ludicrous. The Supreme Court has already told us how to compute interest in this situation, which is market rate plus an appropriate risk factor. Any judge who deviated far from that rule would be quickly reversed. And if there could be any doubt, the current version of the statutory language expressly codifies these Supreme Court holdings. As a result, judges would ensure that borrowers would in effect receive a market-rate loan equal to the retail market value of their house; if they could not afford this restructured loan, they would be ineligible for relief.

Fifth, I am skeptical from my own experience that out-of-court consensual modifications can be much of a solution here. As I mentioned earlier, these mortgages in no way resemble the conventional mortgage held by the local bank that was fairly protected from modification 30 years ago. Truly, and even in hotly litigated cases under threat of contempt, no one knows how to contact or deal with the actual current holder of the mortgage note. Yet servicing agents have fiduciary obligations to these investors, and are obviously hesitant to engage in unilateral modifications and risk a future suit themselves. The beauty of the bankruptcy solution is that, in a sense, we don't care who owns the loans. We enter in rem orders binding as to the property, the debtor, the servicer, and whoever the noteholder is.

Sixth, it is important to note that this has nothing to do with BAPCPA, except with the one minor matter of relaxing the debt counseling requirement when foreclosure is imminent. I fully understand everyone's fatigue with bankruptcy reform, and the desire not to take the lid off that kettle right now. This deals with a provision passed in 1978 that preceded BAPCPA by many years.

Seventh, in looking at the criticisms that have made of this proposal, it seems to me that most if not all have been fairly answered by modifications to the bill that have been made since its initial introduction. The criticism that it would throw the entire home mortgage market into chaos, raise interest rates, and make credit harder to get, has been defused by limiting this remedy to subprime and nontraditional mortgages, to borrowers for whom foreclosure is imminent, and most importantly, making it applicable to only past mortgages. It would only

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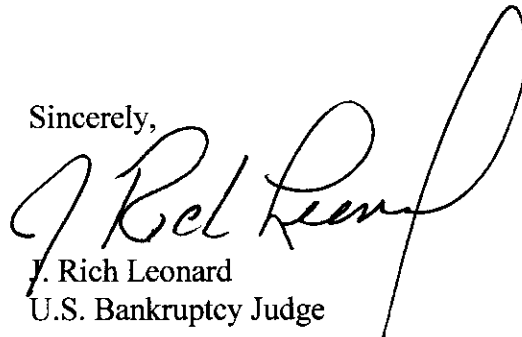
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apply to subprime and nontraditional mortgages entered into between 2000 and the effective date of the Act. It is difficult to see why it would have any impact whatsoever on the mortgage market going forward.

In conclusion, as you evaluate whether this is good legislation, it is important to focus on precisely which of your constituents this provision would assist. It would work to the benefit of people who are willing to struggle and sacrifice to remain in their primary residence because they need it for their family. It will not help those folks who made a speculative investment in an appreciating real estate market they are now willing to walk away from. It will help those families with sufficient income to make a fair mortgage payment and pay all of their other expenses. Otherwise, they will not be able to persuade a bankruptcy judge their reorganization plan is reasonable, no matter how badly they need to stay in their home. And it will help those families who want to keep their home so badly they are willing to commit all of their income and earnings to the control of a trustee for five years, knowing that if they fail at any point, they lose the entire benefit of the process. The idea that this is an easy or soft solution is absurd, but it could provide meaningful relief for hundreds of thousands of families in the next few years. And the benefits to our schools, neighborhoods, and communities of keeping homeowners in their homes are obvious.

It is not my job as a judge to tell you what to do in terms of substantive policy. But I can state the obvious: millions of average Americans who have worked hard to have a home are at risk of losing them, and this is one policy solution among many worthy of careful consideration to keep that from happening.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Rich Leonard". The signature is fluid and cursive, with a large loop at the end.

J. Rich Leonard  
U.S. Bankruptcy Judge

JRL/csb