

# Topics Covered:

# Alan Stratton: Balloon ? Per CFPB Rules and Foreclosure Mediation on a 2nd

# Asset Highlight: 39917 – 121 N. Range Line St

**2017 Titanium Office Visits
Summer Summit**

**DS News Article**

**Background**

Location: 5 acre rural wooded estate northeast of Seattle, WA in Snohomish County.

Value: $500,000 – (475k, 495k, 537k depending on source and timing)

1st Note UPB: $330,000

1st Note PITI: $2,800 / mth

1st Note Interest: 5.25%

**2nd Note (ours)**

UPB: $101,000

Arrearage: $83,000 from 2/1/2010

Interest: 9.625%

Balloon: 6/2022

Payment: $873

Borrower income: $21,000/month (and spends all of it – trivial savings)

**Question 1**: On a pre-crash note (2007) with a balloon date of 6/2022, can the balloon provision be enforced in today’s climate? While the pre-crash answer would be the borrower would sell or refinance by that time to payoff the balloon, we have a case where the borrower is likely not to sell and whose credit is presently trashed. (However, they did get a 60k car loan last year.) Due to our concern for this question, in our mediation session, we negotiated a modification that did not include a balloon payment

**Alternatives:**

* Refinance by 3rd party or Sale: While ideal, I want to understand the viability of other alternatives.
* Foreclose: if challenged in court, can we as lenders proceed according to the contract and law?  Or are we effectively forced to refinance with same terms as original note?
* Extend with same terms: This seems to be the current answer but then we have to carry the note for up to another 15 years.
* Extend with shorter term/higher payment – Is this possible or is #3 the general answer? In other words, can we restructure to improve cashflow/yield?

We filed foreclosure and had the WA required mediation last Friday: We were proposing a new monthly payment of $3,000/month with same interest rate. At this level DTI is less than 30%. This would clear the arrearage in about 4 years but the balloon comes due 18 months later. We’re proposing to keep the same payment rate beyond the 4 years until paid. This pays off the entire note about 4/2024 (2 years beyond the balloon). We were concerned what a mediator may force us to accept.

Here's what the proposed modification looks like:

1. Reduce interest rate from 9.625% to 8.5%.
2. Capitalized arrearage of $83k. UPB changing from 101k to 184k
3. Down payment of $15k;
4. Trial payment plan of $2k/month 4/1/2017 to 7/1/2017
5. Permanent modification in 7/2017
6. No balloon requirement – term extended from 6/2022 to 1/2028
7. Monthly payment from $873 to 2,000 / month

Mediation Summary

* My worksheet played a significant role in the mediation. I had phoned in; our attorney was physically present and had my worksheet. As we negotiated, each of us could immediately see the impact. The day before the call, we discussed strategy for the call.
* We started with a “shock and awe” proposal with payment based on Combined Debt to Income of 31% of his 21k monthly income. Then deducting 1st lien PITI of $2,871, we had $3700 available for 2nd lien payment. We also assumed a $30k down payment.
* They immediately adjourned for a private discussion. Upon their return, we offered our first step back.
* We discussed the pending balloon date, backed down the monthly payment, backed down the down payment. Their proposed payment was 2K/month and 4.5% interest similar to 1st lien.
* Borrower’s attorney then complained that borrowers wanted to refinance in a couple of years but that the balance did not decline very much. With the worksheet at hand, we could show that they were paying down the balance by at least $800/month. Bluff called.
* In the end, the discussion boiled down to their concern that as a commission based salesperson, his income was not reliable enough for a $3k monthly payment. We were prepared to waive accumulated late fees of $3,700. After much discussion, we settled on 2k/month and to reduce the interest rate by 1 1/8%. On a present value basis the interest rate reduction amounts to about 6k or only $2300 over the late fee giveback (that we did not include). Combined Debt to Income is 23%.
* We finished within 2 hours.
* Borrower immediately wrote 2 checks for part of the down payment as good faith.
* They left happy. We’re happy but always wonder if we left money on the table.
* BTW, our lien had been stripped in a 2011 Bk13 proceeding that was dismissed.

Keys to Success: Homework, strategy, flexible worksheet.

**Question 2:**

As a modification, we should not need a Mortgage Loan Originator. Especially that the payment is within DTI of 31%. Correct?

**Question 3:**

Our attorney is also concerned about a possible statute of limitations defense if we resorted to litigation. While this seems to have been resolved in Florida, WA is in a different corner of the country. We could drop some payments from the default date if necessary. But borrower was in BK13 for about 18 months before termination. It would seem that a BK13 stay would offset a shorter incursion into the statute of limitations timeframe. Does this seem viable?

**Observation 4:**

Washington state requires purchasers of defaulted debt to register as debt collectors even if serviced by a 3rd party servicer. Our attorney recommended we NOT fight the issue. We registered and posted the bond at a cost of less than $500.

**Alan Stratton**

Asset Review: 121 North Range Road, Ursa, IL 62376

**2017 Titanium Visits**

Titanium Office Visit – April 10th – 12th

Titanium Office Visit – June 19th – 21st

Titanium Office Visit – July 17th – 19th

Titanium Office Visit – August 14th – 16th

Titanium Office Visit – September 18th – 20th

Titanium Office Visit – October 9th – 11th

**Hold June 2nd and 3rd for the Summer Summit**

**DSnews – Here is How to Find Market Deficiencies (Written by - Eddie Speed)**

[**http://www.dsnews.com/daily-dose/01-16-2017/find-market-deficiencies**](http://www.dsnews.com/daily-dose/01-16-2017/find-market-deficiencies)

**New email for Content Docs Submissions**

<https://www.dropbox.com/request/Enk7QksdLwgqXgVMK2Bz>

**New email for closing issues** (Includes request for any missing executed post-closing docs)

**PostClosing**@colonialfundinggroup.com

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