



California Department of Real Estate

**** CONSUMER ALERT ****

(First Issued 3/2009)

IMPORTANT NOTICE AND UPDATE TO CONSUMER ALERT --

ADVANCE FEES FOR LOAN MODIFICATIONS ARE NOW ILLEGAL IN CALIFORNIA

Pursuant to Senate Bill 94, as of October 11, 2009 it is **illegal** in California for any person, **including lawyers**, real estate brokers, real estate salespersons, corporations, companies, partnerships, or any other licensed or unlicensed person or party, to demand, charge, or collect any advance, up-front, or retainer fees, or any other type of pre-payment compensation, for loan modification work or services, or any other form of mortgage loan forbearance.

So if someone tells you that they can (i) help you modify or renegotiate your home loan, (ii) help you arrange to have your lender refrain from collecting your mortgage payments, and/or (iii) help you convince your lender to abstain from foreclosing on your home, **and they ask you for, charge or collect money or fees up front**, that is a violation of California law.

If you are interested in the details of the law change, a copy of Senate Bill 94 (Calderon) may be obtained at www.leginfo.ca.gov and clicking on "Bill Information".

Please report all violations of the new law to the California Attorney General, and to the California Department of Real Estate. If a lawyer is involved, or if a company or entity claims to be attorney-backed or attorney-affiliated, also report those violations to the California State Bar. Contact information for the Attorney General, Department of Real Estate and State Bar is provided in the Department of Real Estate Consumer Alert.



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FRAUD WARNINGS FOR CALIFORNIA HOMEOWNERS IN FINANCIAL DISTRESS

I. HOME LOAN MODIFICATION AND FORECLOSURE RESCUE PROGRAMS – BEWARE OF SCAMMERS AND CON ARTISTS, WHO ALMOST ALWAYS DEMAND THE PAYMENT OF MONEY UP FRONT.

As homeowners continue to feel the pinch from the recession, and as home loan worries, delinquencies, defaults, and foreclosures continue to occur in California, loan modification and foreclosure rescue scams are growing and soaring. The FBI has said that a “rampant mortgage fraud climate” currently exists, and that California is one of the top states for loan fraud.

Whether they call themselves foreclosure prevention or rescue consultants, forensic loan auditors, loan restructuring agents, debt settlement specialists, loss mitigation experts, loan modification specialists, mortgage modification consultants, or some other official or important sounding title(s), there are thousands of dishonest and rogue individuals and companies (most of whom are unlicensed, many of whom use lofty sounding names, and some of whom falsely claim to be non-profits, to be attorney backed or affiliated, and/or to be affiliated with the federal and State governments—e.g., they suggest the backing of the Obama Administration, a Member of Congress or some other elected official, or of a government agency or department, such as HUD, FHA, the California Department of Real Estate, the California State Bar, etc.) that have popped up and appeared all over the State of California. Many of the individuals have criminal and/or disciplinary records, and many of the companies are just fraud factories and high-pressure sales mills operating out of telephone boiler rooms that are in the “business” of offering impressive sounding but non-existent loan services so that they can steal your money. Some are operating nationally, and some are even operating outside of the country.

To find their homeowner victims, they scour foreclosure notices, they get information on adjustable rate loan re-sets from title companies, and they use other tools. Quite simply, the bad players look for homeowners who are in foreclosure, who are struggling to make home loan payments, or those who need to modify their mortgages to find relief from financial distress. Once they find their victim targets, they market hope – and all too often, it is false hope.

The scammers advertise on the radio, in newspapers, through the Internet, via email and the U.S. Mail, and on television. Some even go door-to-door.

While there are people and entities in the business of modifying loans that are licensed, legitimate and qualified, you must be cautious and BEWARE.

DON'T LET THE FRAUDSTERS TAKE YOUR HARD EARNED MONEY. AND DON'T BE THE NEXT VICTIM OF THE CON ARTISTS*****

II. LOAN MODIFICATIONS AND THE UNSCRUPULOUS CON.

While there are “foreclosure rescue” scammers who promise to save homeowners from foreclosure – or to delay a foreclosure via litigation and/or bankruptcy filings -- after a notice



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of default is recorded, the most common type of fraud (the “fraud of the moment”) relating to home loans is Loan Modification fraud.

Because of the current economic situation, you may not be able to afford your mortgage payment, or you may be in foreclosure. If you are not able to negotiate a deed transfer to your lender in lieu of foreclosure, to sell you home through a “short sale”, or to refinance your home loan, an option that may be available to you is a Loan Modification.

What is a Loan Modification? That is where you and your lender (or the loan “servicer” on behalf of the lender or loan “investor”) (both the loan servicer and lender will be referred to below as “lender”) agree to modify one or more of the terms of your home loan. The terms could be a lower interest rate, an extension of the length of the loan (like making a 30 year loan into a 40 year loan), a conversion of an adjustable rate loan (called an ARM) to a fixed rate, a rate freeze, the deferring of some of your payments, or any other modification of loan terms.

The goal of a successful Loan Modification is to help you keep your home and to give you a real, meaningful, sustainable, and long-term adjustment to your current home loan that works for your financial situation.

But loan modifications are not possible for every homeowner, and the loan modification “success rate” is currently very low in California. The available data suggests that loan modifications vary from lender to lender. Many lenders have guidelines for loan modifications. If your financial situation meets the guidelines, a loan modification is possible with the necessary showing of financial “hardship” on your part. If you do not meet the guidelines, a loan modification may not be possible. It really depends on your lender and your hardship.

This is where the scammers come in. They often falsely claim that they can guarantee to “negotiate” you into a loan modification, make huge and hollow promises, exaggerate or make bold statements regarding their modification successes, publicize their supposed expertise, ask for money up front, and then take your money and leave you in worse shape than before. They may simply take your money and run. Please see and review the section captioned “Signals of Fraud/Red Flags to Watch Out For” below.

III. THINGS TO DO TO PROTECT YOURSELF FROM BECOMING A LOAN MODIFICATION/ RESCUE SCAM VICTIM.

A. Do It Yourself (and Do It As Soon As Possible) -- You can contact your mortgage lender directly and request a Loan Modification that works for you and your lender. Don’t wait to call if you cannot make or believe you will not be able to make your mortgage payments. Be persistent! - call back many times. Make detailed notes about your attempts to call, when you have left messages, who you speak with, what was said, and what offers are discussed and/or made.



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The Department of Real Estate has some practical tips for you for working directly with your lender on a loan modification. Those consumer tips can be accessed at http://www.dre.ca.gov/faq_home.html.

B. Other Free and Safe Options -- If you don't believe you can negotiate a Loan Modification yourself, or if you do not want to, there are free and safe options available to you.

1. The **U.S. Department of Housing and Urban Development** ("HUD") offers **Foreclosure Avoidance Counseling** through non-profit agencies in California. Go to HUD's web site at www.hud.gov, or call 800-569-4287, to find counselors. HUD also offers information to homeowners facing the loss of their home.

2. **HOPE NOW Alliance** - this is a cooperative effort of home loan counselors and lenders, and it consists of HUD intermediaries. Go to the HOPE NOW web site at www.hopenow.com or call 888-995-HOPE.

C. Locate and Work with a LEGITIMATE, LICENSED, and QUALIFIED person or company ("Log on, Look em up, and Check em out") – www.dre.ca.gov

If you don't want to negotiate a loan modification by yourself (or believe you are unable), and if you also decide not to use the free counselors provided through HUD or the Hope Now Alliance, you can hire a representative to negotiate for you. But BEWARE – YOU NEED TO FIND SOMEONE WHO IS LEGITIMATE, LICENSED AND QUALIFIED BY EXPERIENCE AND TRAINING. And remember that you do NOT have to pay anything up front!!!

1. California licensed real estate brokers can perform loan modification work, and licensed real estate salespersons can do such work under the supervision of their employing broker.

While it is currently legal for a real estate broker to charge you in advance of performing the loan modification services before a Notice of Default is recorded, **you do not have to pay anything in advance of a successful loan modification, and all broker fees are negotiable**. If a real estate broker wishes to charge an advance fee, he or she must submit an Advance Fee Agreement and all supporting materials to the Department of Real Estate ("DRE"). If the agreement and materials meet the requirements under the law, DRE issues a no-objection letter. This simply means that the department does not object to the use of the agreement form and related materials. And please understand that a no-objection letter does not mean that DRE recommends, approves or endorses the agreement or the services of the real estate licensee. All fees collected in advance must be properly handled as trust funds, which require special handling and must be deposited into the broker's trust account. A licensee must refund to you any unearned portion of the advance fee(s) collected if any of the promised services are not completed.



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You should go to DRE's web site at www.dre.ca.gov, review and check the information on advance fees and loan modification services, carefully review the public license information on the real estate broker (that information will include any disciplinary history), and look for any Desist and Refrain Orders (D&Rs) that have been issued against companies and individuals. If a D&R has been issued, that means that DRE has determined the individual and/or company is unlicensed and/or has operated unlawfully.

2. California licensed lawyers can also perform loan modification work, but only when such lawyers render those loan modification services in the course and scope of their practice as an attorney at law.

Lawyers can also currently charge fees in advance (typically called a retainer), and even after a Notice of Default has been recorded. But lawyers **must** have a written fee agreement with you. And as is the case with real estate licensees, **you do not have to pay anything in advance of a successful loan modification, and all legal fees are negotiable**. Any fees that you pay to the lawyer(s) in advance do not have to be placed in their trust accounts.

Just as you should do with real estate licensees, check out lawyers by going to the website of the California State Bar, www.calbar.ca.gov. Check the lawyer's bar membership records and look for any discipline. Also, demand to meet and speak in person with the lawyer whom you are paying to represent you.

Unfortunately, some loan modification business models have claimed lawyer involvement but they are just unlawful schemes to avoid the prohibition against the collection of advance fees by a real estate licensee after a Notice of Default is recorded. In others, lawyers are just a "front" or non-participating "magnet" for business from desperate homeowners.

******Be on Guard and Check Them Out (Know Who You Are Dealing With)- Do Your Own Homework (Avoid The Traps Set by the Scammers)****** In addition to looking at the license records, contact the Better Business Bureau to see if they have received any complaints about the person or company. But please understand that this is just another resource for you to check, and the loan modification provider might be so new that the Better Business Bureau may have little or nothing on them (or something positive because of insufficient public input).

Also, and very importantly, ask the loan modification "specialists" (whether they are real estate licensees or lawyers) about their financial, mortgage and real estate experience, the options and methods they use to renegotiate home loans, when they were first licensed, whether their license is still active, whether they have ever been disciplined, where, when and how they got their experience, what data they have to prove their past successes, what evidence they have of prior successful dealings with your lender, and also ask them to define a loan modification and the process that they will undertake and the time that they will spend to successfully negotiate a long-term, affordable and sustainable modification for you.



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D. Signals of Fraud/Red Flags to Watch Out For --

1. Demand for payment up front (advance fee payment). While not unlawful if paid to licensed persons in the certain limited situations discussed above, the demand or request for advance payment should alert you to the possibility of fraud. IF YOU ARE ALREADY STRAPPED FOR CASH, YOU SHOULD NOT PAY ANY MONEY UP FRONT. USE THE MONEY FOR A MORTGAGE PAYMENT, MOVING EXPENSES, OR A SECURITY DEPOSIT ON A RENTAL. Remember, once the scammers have your money (whether paid by cash, check, debit card, credit card or wire transfer), it will likely just vanish.
2. Promises or guarantees of success, such as “We Can Save Your Home. We Have Saved Thousands. We can cut through the Red Tape. We have expert, skilled negotiators and specialists on our staff who have worked with lenders. We have an Inside Track, and can get to your lender when you cannot. Free Consultation. Money Back Guarantee”. No such guarantees are possible, and there are no assurances of a successful loan modification. In fact, some lenders will not work with for profit third party representatives.
3. Too good to be true testimonials, such as “We Modified Terri G’s Adjustable Rate Loan, Which Had Spiked to 8 Percent, to a 2.5 Percent Fixed Rate Loan”. False advertising is rampant. Remember the old adage – If something sounds too good to be true, it is probably false.
4. Claims that a loan modification company is attorney-backed, attorney-affiliated, or attorney-based -- especially where no lawyer or law firm is identified or mentioned. Many of these entities are simply using the name of an attorney (the name might be for show only, and/or there might not even be a lawyer involved) and scams skirting the law. We are aware of a case where loan modification scammers used the name of a dead lawyer to commit their fraud!
5. Claims that a loan modifier is operating under a California Finance Lender’s (CFL) license issued by the California Department of Corporations. This is unlawful according to the Commissioner of the Department of Corporations.
6. A request that you grant a “power of attorney” to the loan modifier. The scammer may use the power of attorney to sell the home right out from under you.
7. A request that you transfer title to your home to the loan modifier or some third party. This is likely evidence of a scam where these scam artists will strip all of the remaining equity in your home.
8. Promises that you can repair your credit history by the payment of rent to the loan modifier or some third party.



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9. Lease/rent-back scams, where you are told to transfer title to a third party, rent the home from that party, and then buy it back later. Transferring your deed gives the con artists the ability to evict you and sell the home.
10. Instructions to pay someone or some company other than your home loan lender or servicer. Sometimes the bad guys tell you to pay them your mortgage payment. Always pay your lender/servicer, and no one else.
11. Claims that a loan modification company will file a bankruptcy or other frivolous case for you to “force” a lender to negotiate a loan modification. So-called “forensic loan reviews” may fall into this category.
12. Assertions by the so-called loan modifier that you should just sign documents that they have filled out, without reviewing them first. They will say something like, “Trust me. Sign right here”. You must carefully read and understand all of the documents you sign. Be especially wary of promises by salespeople that they will “take care of everything” and you just need to sign “a bunch of forms with boring legalese”.
13. Lawyers or real estate licensees who tell you that they have no time to meet with you face-to-face.
14. Unlicensed people or companies.
15. Instructions from a loan modification provider that you should not contact your home loan lender or servicer, a lawyer, an accountant, or a non-profit housing counselor. Example: “From today on, talk only to me”.
16. Being advised to miss payments in order to improve your chances of getting a loan modification. While there are lenders who will not modify loans for borrowers who are current on their mortgages but who are in danger of default, following this advice may create other negative consequences and can put you on the path to foreclosure.
17. High-pressure sales tactics or warnings that “you must act today”, “tomorrow may be too late”, or “I need some money from you today so that I can save your home”.

It is impossible to list all of the Red Flags that might suggest fraud, since the scammers and con artists continue to adapt and evolve, and modify and refine their stories, pitches and cons. They are ruthless, cunning and clever. To stay ahead of law enforcement, they change their names, addresses, and bank accounts, and may re-cast themselves as non-profits or bogus law firms. Please be alert, be cautious, be skeptical, and do your own homework using reliable and legitimate sources.

And remember, Don't Rush! You are always able to “slow down” or “pause”, and you should tell the provider of Foreclosure Rescue and Loan Modification services that you want to



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check out their license status with the DRE or the California State Bar, as well as references. Any service provider who objects to your “checking them out” may have something to hide, like no credentials or license (or bogus credentials) – so be wary!!! Log on, Look em up, and Check em out!!! www.dre.ca.gov.

IV. WHAT YOU CAN DO IF YOU HAVE BEEN SCAMMED (OR BECOME AWARE OF A LOAN MODIFICATION – OR FORECLOSURE RESCUE -- SCAM)? REPORT FRAUD AND FILE COMPLAINTS WITH --

1. The DRE if a real estate licensee is involved, or if the person or company is unlicensed. If the person or company is unlicensed, the DRE will file a Desist and Refrain Order. If the person or company is licensed, the DRE will commence disciplinary action, http://www.dre.ca.gov/cons_complaint.html.
2. The California Attorney General, at www.ag.ca.gov/consumers.
3. The District Attorney, Sheriff, local police and local prosecutor in your community.
4. The California State Bar if a lawyer is involved, or if an unlicensed person claims to be a lawyer at www.calbar.ca.gov.
5. The California Department of Corporations, at www.corp.ca.gov, if a loan modification entity or person claims to be operating under a California Finance Lender License.
6. The Federal Trade Commission, at www.ftc.gov. They have an excellent fact sheet on Foreclosure Rescue Scams.
7. Federal Bureau of Investigation (FBI), at www.fbi.gov.
8. HUD, at www.hud.gov.
9. The Federal Deposit Insurance Corporation (FDIC), at www.fdic.gov.
10. The United States Attorney in the District in which you live. Look in your phone book or on the Internet.
11. The Better Business Bureau in your community.
12. The Chamber of Commerce in your community.
13. The California Department of Consumer Affairs at www.dca.ca.gov, and your local Department of Consumer Affairs.



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14. File a Small Claims Court action. These are informal courts where disputes are resolved quickly and inexpensively by a judge. Since 2008, you can recover up to \$7,500 in Small Claims Court. You represent yourself, and can request a judgment for money damages. If your judgment is based on fraud, misrepresentation, or deceit, or conversion of trust funds, and the judgment is against a real estate licensee, DRE has a Recovery Fund that may be able to pay your claim. Go to the DRE web site at www.dre.ca.gov, and look under the tab for "Consumers". Also, the California Secretary of State has a "Victims of Corporate Fraud Compensation Fund" that provides restitution to victims of corporate fraud. Go to the Secretary of State's web site at www.sos.ca.gov/vcfcf for more information.

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