



California Department of Real Estate

**** CONSUMER ALERT ****

(Issued 3/2009)

FRAUD WARNINGS FOR CALIFORNIA HOMEOWNERS IN FINANCIAL DISTRESS

I. HOME LOAN MODIFICATIONS.

Because of the current economic situation, you may not be able to afford your mortgage payment. If you are also not able 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 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, the deferring of some of your payments, or any other modification of loan terms.

The goal of a 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.

II. BEWARE OF LOAN MODIFICATION SCAMS AND CON ARTISTS, WHO USUALLY DEMAND THE PAYMENT OF UPFRONT FEES.

Just like after a hurricane hits, where unscrupulous contractors and repair people may collect money for repairs and then not do anything, there are numerous rogue and dishonest operators and companies (many of whom are unlicensed) that have appeared in the wake of the current economic downturn -- and more are popping up every day. They make false promises about their abilities to help get you a loan modification, collect money up front, and then do nothing or next to nothing. They are predators who take advantage of those who are or may be vulnerable.

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

A. Do It Yourself (and Do It As Soon As Possible) -- You can contact your mortgage servicer and/or 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.

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.



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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”) -

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 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. 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.

But 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. 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 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.



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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.

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 -- Do Your Own Homework****** 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 they got their experience, and also ask them to define a loan modification and the process that they will undertake and the time that they will spend to negotiate a long-term, affordable and sustainable modification for you.

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.
2. Promises or guarantees of success, such as "We Can Save Your Home. We Have Saved Thousands. Free Consultation. Money Back Guarantee". No such guarantees are possible, and there are no assurances of a successful loan modification.
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 3.5 Percent Fixed Rate Loan".
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.



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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 not lawful 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.
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.
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. 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.
16. Being advised to miss payments in order to improve your chances of getting a loan modification.
17. High-pressure sales tactics or warnings that "you must act today" or "tomorrow may be too late".



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It is impossible to list all of the Red Flags that might suggest fraud, since the scammers and con artists continue to modify and refine their stories, pitches and cons. They are ruthless and clever. Please be alert, be skeptical, and do your own homework.

And remember, Don't Rush! You are always able to "slow down" or "pause", and you should tell the provider of loan modification services that you want to check out their license status with the DRE or the California State Bar. Any service provider who objects to that request 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 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 District Attorney, Sheriff, local police and local prosecutor in your community.
3. The California Attorney General, at www.ag.ca.gov/consumers/general.php.
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 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 Better Business Bureau in your community.
11. The Chamber of Commerce in your community.
12. 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



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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.