



# CONSUMER NEWS

## SAN DIEGO CITY ATTORNEY'S OFFICE

### Loan Modification

July 2009

The current downturn in the real estate market has led to an increase in the number of businesses and individuals offering to perform loan modification services for consumers. These individuals offer homeowners the service of negotiating with their lenders for more favorable terms or obtaining a better loan from another lender.

There are a number of laws that regulate the loan modification business. Before hiring someone to modify a home loan, a consumer should make sure the business or person has complied with the law. The City Attorney's Consumer & Environmental Protection Unit prosecutes those businesses and individuals who do not comply with the laws.

#### *REAL ESTATE BROKER LICENSE IS REQUIRED:*

Anyone who charges another person for the service of negotiating loans secured by real

estate (mortgage loans), must obtain a real estate broker's license in California prior to doing business (Business & Professions Code §10131(d)). Anyone who offers to perform loan modification services when he/she is not a licensed real estate broker is guilty of a misdemeanor and faces up to 6 months in custody and a fine of \$10,000 per violation (B & P §§10130 & 10139).

Licensed attorneys do not have to obtain a real estate broker's license if they are rendering legal services to a client that includes real estate work (B & P 10133(a)(3)). An attorney is required by state law not to allow others to use the attorney's license to practice law, so if an attorney offers loan modification services, the client should be meeting with the attorney, not with a company that is affiliated with the attorney.

#### *FALSE ADVERTISING PROHIBITED:*

California law prohibits false advertising by any business (B & P 17500). A real estate broker or salesman who advertises in a

newspaper or by mail must disclose that he is performing acts which require a real estate license (B & P §§ 10140.5 & 10140.6).

#### *ADVANCE FEE CONTRACTS MUST BE APPROVED BY THE DEPT. OF REAL ESTATE:*

Licensed real estate brokers who offer loan modification services which require up-front fees must register with the California Department of Real Estate. The brokers must submit for review a copy of the contract they require home owners to sign. The contract must outline the services that will be performed, as well as inform the consumer when the services will be performed, and how much the services will cost. A complete list of real estate brokers who are registered with the Department of Real Estate to perform loan modification services is available online at [www.dre.ca.gov](http://www.dre.ca.gov).

#### *ADVANCE FEES MUST BE DEPOSITED IN A TRUST ACCOUNT:*

A real estate broker, who collects a fee in advance of delivering the

services for which he/she was hired, must deposit the money in a trust fund until he/she earns them by performing the services. (B & P § 10146). Attorneys also are required to deposit funds in trust accounts until they earn their fees (B & P § 6211(a)).

If a broker or attorney fails to deposit advance fees into a trust account or uses that money for his/her own purposes prior to earning the fees, the person is guilty of embezzlement, a felony, punishable by up to 3 years in prison and a fine of \$10,000.

If a person or business fails to provide the loan modification services, he/she must refund the money received to the consumer. Failure to do so is theft.

**COMPLAINTS:**

If a consumer encounters a person or business offering loan modification services who appears not to be in compliance with the laws of this state, the consumer should report the matter to the California Dept. of Real Estate (DRE). In San Diego, the telephone number is (619) 525-4192. Investigators for the DRE will determine whether a violation of law has been committed and refer the matter for prosecution.

The City Attorney's Consumer & Environmental Protection Unit is working with the DRE to prosecute those who take advantage of distressed homeowners by skirting the laws governing the loan modification business.

**TIPS:**

Homeowners who find themselves straddled with a mortgage loan they cannot pay can seek modification of the loan terms directly with the lender. It is not necessary to hire

another person to advocate with the lender on your behalf.

If you decide to hire a professional to do your loan modification, the following tips may be helpful:

- Make sure the person/business is licensed as a real estate broker
- Avoid paying a fee prior to performing services. If you pay an advance fee, make sure the money will be deposited in a trust account until services have been rendered.
- **DO NOT DO BUSINESS WITH ANYONE WHO** recommends you not pay your mortgage payments. This practice will only damage your credit and hasten foreclosure.
- Be sure you know what the person is offering to do for you. If you only intend to pay the person once the loan has been modified, make sure that both of you agree about this.
- **BEWARE OF INDIVIDUALS** who direct you to send them your monthly mortgage money so they can pay your mortgage! These companies are required to be registered with the Cal. Dept. of Corporations as proraters. It is better to pay your creditors directly.
- Be sure you have a copy of a written contract with the loan modification business setting forth the terms of your agreement and setting forth a manner for you to obtain a full refund if services are not rendered.
- If you hire an attorney, make sure the attorney is licensed to practice in California and that the person you are meeting

with is the attorney. The California State Bar Association maintains a searchable database of attorneys at [www.calbar.ca.gov](http://www.calbar.ca.gov).

- Before you hire a loan modification business, check out the Better Business Bureau's website at [www.sandiego.bbb.org](http://www.sandiego.bbb.org). The BBB maintains a public website where you can see if others have complained about the business.
- Ask the person for references and check them out. Ask the person for proof of a license.
- Report suspicious activities to the Dept. of Real Estate at (619) 525-4192.

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**San Diego  
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Newsletter written by Tricia Pummill.

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The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of consumer protection laws, call the City Attorney's Hotline at **(619) 533-5600**.