

Tustin Law Center

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Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Re: On behalf of two Companies associated with “**Loan Modification**” programs:
(1) Saving the American Dream (Loan Audits)
(2) Tustin Law Center (Law Firm)

Dear Ladies and Gentlemen:

For your information, enclosed is my letter to the Federal Trade Commission, with attachments, concerning “Loan Modification” companies and law firms.

I write this letter to request that you encourage home owners facing foreclosure to seek legal advice.

Your website creates the impression that everyone involved with loan modification is a “scammer”. It is true that Loan Mod hopes have been destroyed by scammers who have taken advantage of homeowners who are in financial straits. The success and prevalence of the scammers is wrong. It reflects genuine and continuing market dynamics as well as the frailties of human nature, especially in the absence of the participation of lawyers.

In October 2008, the State Bar recognized the sharp demand in what was a largely unmet need for legal services in this area of practice. The Bar provided a helpful ethical compliance checklist for attorneys who were stepping up to help the consumers. However, there were a few attorneys who flagrantly abused their clients and the entire body of Rules of Professional Responsibility. By mid-2009, the Bar began to take the position that attorneys who were involved with “loan modification” would be singled out and subjected to a high level of scrutiny.

As a result of that position (that “loan modification” was a flag for an ethics investigation), self-respecting attorneys who valued their reputations began retreating from such assistance. The withdrawal of decent attorneys did not abate the demand or the need for legal services. That market was only growing. However, as the members of the Bar withdrew, it left the field open to non-attorneys and unregulated companies.

Letter to Mr. Jerry Brown, AG 01 - September 19, 2009

Basically, decent attorneys were frightened out of the business. The homeowners whose toxic loans were doubling their payments in the face of depression conditions had fewer choices for professional help. This expanding market with decreased service was an invitation to scammers, thus fulfilling the prophetic “warnings” against all loan mod assistance.

In turn, the lenders leaped upon the opportunity to criminalize anyone who was helping the borrowers. The lenders began delaying and refusing modifications, alleging “fraud” on the part of these non-attorney loan mod companies. Of course, that allegation itself was fraudulent: Most of the scammers would take money without submitting loan mod applications at all, thus the refusal to respond to (or deliberately delaying) actual legitimate applications could not be excused or justified. Yet the lenders’ delay would cause the homeowners to suffer more anxiety and concern over the legitimacy of the firms they had paid to perform actual services.

Homeowners are now angry with almost ALL the companies involved in assisting them with the loan modification process. The lending industry widely publicizes the danger of “scammers” operating in this field (after it was depleted of attorneys). Ironically, while claiming fraud on the part of consumer assistance, the major lenders have received billions in Obama Plan commissions for pretending to do loan modifications which in fact do not meet the Obama Plan guidelines and are delayed or not even made at all. We are still at less than 10% of eligible loans.

The bottom line is that there remains ONE MAJOR REMEDY for home owners who are faced with the triggered increases of these predatory loans: “Consult with an attorney who is experienced with loan modification”.

In almost all websites offered to help consumers, we note the prevalence of that salutary advice. People whose rights, property, liberty or obligations are at stake should and could be encouraged to find counsel. Yet, in this area of “loan modification”, there is a great absence of that invitation. I find almost no public agency which urges home owners to consult an attorney.

Even on the websites of important consumer protection agencies – the State Bar, the FTC, and the Attorney General – I am amazed to discover that as to “loan modification” the entire message is a warning that there are “scammers” and no sensible consumer should pay ANYONE to assist them in this important work. Please. It is important to warn the consumers about scammers. But please also encourage them to retain lawyers. **Without the invitation for them to “consult with an attorney”, they are left with unmet needs and little protection.**

On their part, Attorneys should not be discouraged from helping people who need legal services. Consumers should not be frightened out of hiring attorneys and the lawyers should not be threatened. There is nothing fraudulent about “loan modification” which is an officially promoted solution to a difficult and pressing problem.

Providing legal services for these borrowers is already difficult – they were victimized by the wealthiest institutions on the planet – the financial institutions. Today, the lenders are defending their past predations in court. Not content with placing consumers into inappropriate loans with their homes in jeopardy, they offer no relief from the predatory terms. There are almost no cram-downs or compensation offered for the widespread marketing fraud which the

Attorney General documented in *People vs. Countrywide* (2008). Arguably, an Option-ARM with trebling repayment terms is really not a “loan”; it is a foreclosure device. The lenders are giving consumers no choice but to resort to foreclosure defenses and litigation.

I just ask that your Office consider adding to your website and consumer information programs an invitation to consumers to get legal advice. Add it to your publicity concerning “loan modification”. Instead of just warning about the scammers, please urge consumers to retain attorneys. Do not permit the lenders to criminalize the attorneys who are properly trying to help home loan borrowers who were placed into fraudulent loans.

Although it is almost hopeless, although the lenders are clinging to their inappropriate loans with the same brazen tenacity as they marketed them in the first place, the consumers have many legal theories that justify setting aside the predatory terms of their obligations:

- § The holder in due course doctrine should be challenged in the face of the widespread fraud on the part of the initiating bank.
- § The “arms’ length” commercial loan fiction protecting lenders from a fiduciary duty to home loan borrowers should be challenged.
- § The consumers should have been encouraged to “seek counsel” before signing the Option-ARM provisions – it is significant that very few Members of the Bar participated (on the consumers’ side) in this wholesale rush to place consumers into these loans with almost no information about their legal rights.
- § The “unforeseeability” of the market collapse justifies reformation of the predatory documents. Mr Alan Greenspan himself indicated he was shocked and surprised that bankers had disregarded traditional banking guidelines.

Not content with designing and executing schemes to defraud consumers, the lenders are now designing and executing schemes to pretend they are providing “loan modifications” of the predatory loans. These so-called modifications, from which the lenders are again taking profitable commissions (out of the Obama Plan), rarely redress the injury caused by the predation. The damages caused by these loans are not compensated. The recalculation of the repayment algorithm (performed in seconds by the lenders’ loss mitigation department) is a band aid on the bleeding emotional and financial wound suffered by the consumers.

If the lenders refuse to provide reasonable modifications, if the lenders have to be sued to force them to do involuntarily what they refuse to do voluntarily, then let us step up to that plate with the best attorneys that can be found who will fight for rights of the consumers.

Please do all you can to assist the consumers and aid all attorneys (who are accountable to the State Bar), who can help. That alone will deprive the scammers of market share which has been handed to them in this crisis created in part by the absence of attorneys participating in the process. It is as simple as encouraging consumers to hire attorneys instead of non-attorneys.

In October-December 2009, another third of the Option-ARMS will be triggered to double the mortgage rates of millions of homeowners. Those of us familiar with this industry know that the lenders are not backing away from their predation, and the consumers are no match for the lenders who have now ripped them off twice. Who will help these people?

Respectfully,

Thomas George Key JD MBA