

Tustin Law Center

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September 15, 2009

Federal Trade Commission
Consumer Response Center
600 Pennsylvania Avenue, NW
Washington, DC 20580

[Home Loan Modification concern]

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

Dear Ladies and Gentlemen:

I am an attorney who basically came out of retirement to help home loan consumers who had been placed into inappropriate loans by a predatory lending industry in 2007-2008.

Throughout 2008, many of my former clients were faced with the realization that they had been defrauded by lenders who had promised to “refinance” or provide inexpensive loans. Few attorneys were involved in these transactions. The scale of the predation was enormous, and the damage struck at the heart of the middle class – their home ownership. The banks and their attorneys, re-invented Option ARMS and other toxic mortgages (forbidden after the Depression), and they were marketed in such a way as to take all the oxygen out of the loan market.¹

Many of us attorneys felt compelled to try to help get the consumers get relief from obligations which were frankly so invidious. We felt we were saving the homes which were headed straight for seizure by the banks in what appeared to be an inevitable and deliberate foreclosure process.

I know that the FTC was active in attempting to warn the consumers against the loan programs which frankly were not viable for the homeowners. However, predatory loans were widely and relentlessly marketed by virtually all the major lenders. The biggest home loan provider, Countrywide, led the industry with training programs for brokers, and marketing schemes, all designed to mislead the consumers. See *People vs. Countrywide* (2008).

Many “loan modification” companies – often formed by the brokers who placed the consumers into the predatory loans – began offering to help the consumers faced with

¹ Katz, “Predatory lending with a smiley face” SALON (2009/3/4)
www.salon.com/news/feature/2009/03/04/loan_modifications: According to one mortgage lender, “...it was impossible to stay in business in Southern California unless one was willing to deal in no-doc, option ARM, cash-out and other toxic mortgages”. At page 4 of 6.

dramatically adjusting monthly home loan repayments. Some of these companies took advantage of the financial distress caused by the banks, and provided little or no service while charging the homeowner borrower additional fees. Right here in Tustin, I know of companies who advertise “loan negotiation” services but who do nothing except take money from the consumers. There is no question that the consumers have been subject to further predation by various unregulated types who take money from borrowers who are trying to save their homes.

The Lending Industry has leaped upon these abuses as an excuse to stop providing loan modifications. Now, even legitimate companies cannot compete with the fraudulent ones for price. Attorneys cannot negotiate modifications with lenders who delay or refuse to “negotiate”.

Further, it appears that the lenders (Bank of America, for example) have taken millions in commissions out of the Obama Plan, but withhold or delay offering the loan modifications for which they received the commissions. I have seen offers that do not comply with the Obama Plan standards. The lenders get more money, then delay and even withhold the mod. Ironically, the lenders delay the case and then claim that the financials in the submission packages are “stale” – after as little as three months.

I am now advised by the State Bar that the Bar is going to carefully scrutinize ALL attorneys who have done “loan modifications”. I made an appointment with the State Bar and discovered that they take the position that ALL “loan modifications” are evil. The agency tasked with policing our profession is pre-conditioned to believe that we have been unethical, just from the fact that we tried to solve the problems created by predatory loans!

Frankly, I completely understand the Bar’s position: the loan mods ARE awful. It is true that most of the loan mods are so paltry that within a year, the homeowners are again facing default and foreclosure. However, I do not think the Bar’s “solution” – to go after the lawyers who are trying to help homeowners – addresses the problem.

- ! Why are the “loan modifications” so paltry and insufficient?
- ! Who is responsible for setting up the OptionARMS and the toxic securities in the first place?
- ! What about the integrity and competence of the attorneys who facilitated these instruments which were demonstrably evil?

We are looking at over 200,000 defaults this year in the Los Angeles region alone – wiping out home ownership in huge swaths. This collapse is not caused by attorneys trying to help the consumers. It is clearly the result of the predatory loans which targeted the borrowers in the first place. By punishing (and threatening) the attorneys who are trying to help the homeowners, we create a self-fulfilling prophesy: attorneys will not risk their licenses to help homeowners and once again, the lenders will refuse to offer reasonable loans (they will not reform the predatory terms). The “modification” will be little better than the original predation. The lenders cling to their toxic loans, knowing that they can seize the real estate. Homes lost.

I continue to try to negotiate some benefit for the homeowners with their lenders. I have surrounded myself with the most competent people and we look for solutions which will enable the homeowner to avoid the almost inevitable foreclosure which lies behind the predatory loan terms. We have tried detailed Audits, which document the shameful predation in a manner suitable for litigation. We have presented detailed site-specific Present-Value Analyses comparing a modification of the loan to the cost of foreclosure, showing the realized loss to the investment pool compared to continuing cash flow within the ranges of repayment that the borrower can provide at their documented income. We have tried filing suit. If one thing does not work, we try another.² Our success rates exceed national averages.

Over the course of less than a year, each lender has made adjustments and we see many changes. But the bottom line is that many lenders are now clearly and deliberately stalling and refusing to make or accept reasonable modifications. The lenders know that every stall creates further worry for the borrower. No effort on my part can calm that perfectly understandable anxiety on the part of my client whose modification is left hanging and unresolved for lack of lender response. The clients become angry. They attack the people who are trying to help them.

The borrowers, already victimized once by the lenders, are outraged by the feeling that the lenders are AGAIN making fools of them. The consumers feel understandably frustrated by the delays and the paltry modification offers. These people know that their home ownership is at stake, so they reasonably hire attorneys to help them, only to find that the lenders ignore the attorneys' efforts. The lenders appear to be eager to pour fuel on the anger, and leave the attorneys exposed to angry clients. The lending industry is now pouring millions of dollars into publicity against "loan modification" professionals, including attorneys.

Invitation: If you would like more information about actual practices, please contact me. I can show you at least one law firm that is working very hard to solve the foreclosure crisis one home at a time. We are in the heart of Orange County, which is recording more than 550 defaults each week. See Article, attached, at 4 of 6. This is an economic and emotional crisis, which is far from over. Compare, google "mortgage suicides".

Please put me in contact with any scholars, economists, attorneys or responsible regulators who are interested in "solutions" to the problem. I do not think the lawyers are the problem. More attorneys should be participating, and encouraged to participate, in the solutions. In October, another third of the OptionARMS will be triggered to double the mortgage rates of millions of homeowners. Who will help these people?

Respectfully,

Thomas George Key JD MBA

² Seidenberg, "Salvage Plan" (May 2009) ABA Journal, 57 ff. Attached copy. The author provides a list of suggestions from experienced attorneys representing homeowners to improve the very bad odds. At 59-60. We have implemented the list and added our own.
Letter to FTC 01 - September 17, 2009