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**California Senate Bill 94 & Loan Modification-  
Too Much, Too Late, Too Bad**

On Sunday Gov. Schwarzenegger signed into law SB 94, effective immediately, which bans loan modification firms from being paid up-front, or even asking to be paid up-front. It also restricts attorneys from representing homeowners in trouble.

For some time the Department of Real Estate was already requiring licensed agents who received advance fees to have contracts approved by the Department. However, once the Notice of Default was recorded, no advance fees were permitted. Generally speaking, attorneys licensed in California were not subject to such prohibitions.

The new law requires that, under all circumstances, the loan modification firm must first fully perform all the services they contract to perform, or represent that they would perform, before being paid. Sounds simple- do the work first, and then get paid, what is wrong with that?

The ban on advance fees also prohibits attorneys from requiring a deposit in their trust account. The money in an attorney-client trust account belongs to the client until it is earned by the attorney. It acts as security for the attorney to ensure that they are paid.

I believe SB 94 prohibits an attorney from placing a deposit in their trust account.

Clients in trouble with their mortgages often approach attorneys for assistance. The attorney can advise the client as to many options- loan modification, a short sale, offering a deed-in-lieu, bankruptcy, or even a lawsuit against the lender which would include an injunction preventing foreclosure. All these approaches should proceed simultaneously, because once the homeowner is in arrears, the foreclosure clock is ticking.

**SB 94 now ties the attorney's hands. They can either forego requiring a fee deposit, or explicitly warn the client that negotiating a modification is NOT part of their services. I predict that, in most cases, the attorney will tell the client he's on his own for a modification.**

**Specifically, SB 94 makes it illegal for someone, including an attorney assisting a client with a loan modification, to:**

“(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.”

**Full Text of the bill:**

[http://info.sen.ca.gov/pub/09-10/bill/sen/sb\\_0051-0100/sb\\_94\\_bill\\_20091011\\_chaptered.pdf](http://info.sen.ca.gov/pub/09-10/bill/sen/sb_0051-0100/sb_94_bill_20091011_chaptered.pdf)