



LOAN MODIFICATION SUGGESTIONS **CALIFORNIA LEGISLATION UPDATE 10/09**

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AB 94 Passed 10/11/09 - AB 1588 Pending

In the aftermath of the subprime mess there has flourished a new industry of loan modification counseling. Unfortunately, many of the entrants have been no more scrupulous than the people at the bottom who implemented the meltdown. In order for bogus operations to succeed, they need gullible customers to prey upon. They're not hard to find when motivated by desperate circumstances.

In California, the Department of Real Estate has prohibited "foreclosure counselors" without a "No Objection Letter" from the DRE from receiving payment until contracted or promised loan modification work was completed. They were able to circumvent this rule by working with lawyers. As of October 11, 2009, however, Gov. Schwarzenegger signed into law **SB 94**, which prohibits attorneys and any other persons from collecting an advance fee for residential loan modification and mortgage loan forbearance services.

Meanwhile, lenders have been abusing the loan modification process ever since the concept became prevalent. They continue to participate on a voluntary basis only, and little if any constraint on their common deceptive practices which include the following:

- Gathering borrower's financial information for future use against them in litigation, bankruptcy or other proceedings
- Dragging out the process unduly, wearing the borrower down financially to a point where mounting available legal remedies is no longer feasible
- Selling the loan to a third party at a discount without notice to the borrower, forcing the borrower to start over with a new loan shark
- Entering into a series of temporary (trial) modifications – never permanent

Not every case is amenable to litigation or to a bankruptcy, traditional practice areas where attorney's fees are either paid in advance or included in a Chapter 13 Plan. Quite a bit of our effort has been dedicated to the avoidance of either of those outcomes, so it seems we are now expected to work against ourselves. Let's face it, if no fee can be collected in advance the likelihood of ever collecting is not great, especially if the loan modification fails. Here's what we suggest:

1. Since it is so important to line up your evidence and do a lot of preparation at the earliest moment, we still want you to **CONTACT US** right away. We continue to offer the free 20 minute consultation where we can assess your situation early and determine whether litigation or bankruptcy is appropriate, and we have vast resources to assist you in your self-help loan modification.

2. You can also work with [non-profit counseling agencies](#) approved by HUD. Our clients haven't felt, generally speaking, that they were getting what they need through these resources, which is a legal pit bull on their side, but we may be able to help you keep things on track with them.

Help is on the way, we hope. On September 10, 2009 Speaker Karen Bass of the California State Assembly and Los Angeles Mayor Antonio Villaraigosa announced introduction of **AB 1588** for a program known as "Monitored Mortgage Workout". It is an attempt to level the playing field between borrowers and lenders. The features are as follows:

- Any buyer who receives a Notice of Default (NOD) starting a foreclosure will be eligible.
- The program will be administered by the California Housing Finance Authority.
- A Monitor with enumerated qualifications will be appointed to oversee the loan modification process.
- If the parties cannot work out a loan modification agreement bilaterally, the Monitor will, if it is feasible, prepare his own reasonable loan modification proposal that satisfies the guidelines of President Obama's program.
- If the borrower rejects the Monitor's proposal and is deemed by the Monitor to be in bad faith, the foreclosure goes ahead
- If the lender rejects and is deemed in bad faith, the borrower may file an expedited court action to pursue a fair outcome.