

Avoiding Loan Modification Scams

A [recent story](#) in the San Diego Union Tribune noted an increase in the number of businesses offering loan modification services, a field that was once dominated by nonprofit organizations. A corresponding increase in complaints to the California Department of Real Estate (“DRE”) and the Better Business Bureau has also taken place.

Homeowners that get behind on their payments will often be contacted by companies offering loan modification services because foreclosures are public record. Consumers should be particularly wary of persons or businesses that ask for payment of services in advance.

California [Civil Code § 2945](#) regulates foreclosure consultants. In most cases, anyone who falls under the definition of a “foreclosure consultant” is prohibited from collecting advance fees if a lender has recorded a Notice of Default to begin foreclosure against a consumer’s property. This prohibition against collecting advanced payments also extends to any real estate licensee. If your lender has recorded a Notice of Default, do not pay an advance fee without fully exploring your options.

If you need loan modification assistance, consider using a non-profit agency that can assist you without charging you a fee or a real estate licensee and an attorney who would be willing to work for a fee paid after their work has been completed. The California Department of Real Estate recommends the following websites for information on non-profit housing counseling services:

[Federal Housing Administration](#)

[Hope Alliance Web site](#)

Licensed California attorneys are allowed to request a retainer in advance of providing loan modification services. Licensed real estate brokers may also collect advance fees for loan modification services with special permission from the DRE. However, the broker must have you sign an agreement that tells you what services will be performed, when they will be performed and how much you must pay and the agreement must be submitted to the DRE for review and permission granted to use it. Consumers considering using a real estate broker for loan modification services can call the DRE at (916) 227-0770 for more information.

Many persons offering loan modification services claim to have “inside knowledge” of the lending industry and promise to “cut through the red tape” to convince a lender to change the terms of a loan. The reality is much different. One local attorney I spoke with indicated that many times a lender would only modify a loan after being served with a lawsuit. And while using an attorney may

sound expensive, only an attorney can represent a homeowner in court against a lender threatening to foreclose on an unaffordable loan.

If you are in Southern California and require assistance with a loan modification or other debt problems, please [contact us](#) for a referral.

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).