

***PROGRAM – MORTGAGE REFINANCING AND
MODIFICATIONS***

**AMERICAN BAR ASSOCIATION
BUSINESS LAW SECTION
Committee on Consumer Financial Services
Federal and State Trade Practices Subcommittee
2010 WINTER MEETING
PARK CITY, UTAH
JANUARY 9-12, 2009**

FEDERAL AND STATE TRADE PRACTICES SUBCOMMITTEE

Chair: Michael Goodman, Hudson Cook, LLP, Washington, DC

Vice Chairs: Joanna Crane, Federal Trade Commission, Washington, DC;
Tom Pahl, Federal Trade Commission, Washington, DC

Presentation: CLE Program: *Mortgage Refinancing and Modifications*

The industry participants as well as the general public have placed mortgage refinancing and modifications under a spotlight as everyone tries to understand the causes and effects of our recent economic upheaval. The federal government has brought enforcement actions and initiated new regulatory efforts. State governments have begun to regulate in this area, and state bar associations are examining attorneys' involvement in questionable practices. This program will present the latest information on these efforts and will also consider mortgage refinancing and modifications from the perspectives of servicers and consumers.

Speakers:

Martin Andelman, Orange County, CA

Julie Greenfield, Law Offices of Julia Leah Greenfield, Irvine, CA

Tom Pahl, Federal Trade Commission, Washington, DC

Martin D. Andelman

Martin Andelman is one of the country's most outspoken advocates for homeowners caught up in today's economic crisis. He is a staff writer for The Niche Report magazine. In addition to writing three cover stories and three features this past year, his monthly column, Bringing Up the Rear, found on the very last page, has become one of the popular and controversial in the magazine. Martin also writes the blog, Mandelman Matters, which is found on ML-Implode, one of the highest trafficked sites in the mortgage industry.

Martin launched Mandelman Matters this past April to write about the economic meltdown and the political climate surrounding it, but unquestionably his primary focus has been on mortgage modifications. With over 160,000 readers, Mandelman Matters is one of the most widely read editorial columns in the country on the topic of loan modifications. Martin is known for his ability to make complex subject easy to understand, for never pulling any punches, and many have commented on his sardonic wit.

Prior to devoting his time to writing Mandelman Matters, Martin spent 20 years as the CEO of his own strategic communications consulting firm, The 4th Floor LLC, and has worked for such clients as JPMorgan, Merrill Lynch, Nationwide, AXA Equitable, Arthur J. Gallagher, Bain & Company, and numerous other professional service firms and Fortune 500 companies. He is an author and speaker, having published two books, "RFP NATION" and "The Simplified Guide to Nonqualified Deferred Compensation," along with dozens of white papers and articles on a wide range of topics. Martin has in-depth expertise in areas including accounting, insurance, financial services and health care, and often writes on new legislation, including most recently California's Senate Bill 94 on loan modifications.

His firm has won countless awards including 22 Telly Awards for Programming Excellence, and 16 Apex Awards for Creative Excellence. He has been a frequent and highly rated speaker for the American Institute of Certified Public Accountants (AICPA), and many other association conferences.

Martin majored in Economics as an undergraduate, and is alumnus of Pepperdine University's Presidential/Key Executive MBA Program, Class of 1995, and also completed the graduate studies Masters program in Market Research at the University of Missouri at Kansas City, Block School of Business. He lives in Fullerton, California, with his wife and daughter, and plans to change the world for the better, one reader at a time.

Julia Leah Greenfield

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PROFILE SUMMARY

Mortgage banking law with an emphasis on the following: origination, servicing and secondary market sales of subprime, Alt A and prime residential mortgage loans and secured home equity lines of credit; advertising and marketing of traditional and nontraditional mortgage and HELOC loan products; federal and California compliance for Mortgage Lender and Mortgage Broker websites; federal and California privacy compliance; federal and state predatory lending compliance; state regulatory examinations of and regulations applicable to Mortgage Lenders; drafting of responses to regulatory complaints from state regulators as well as the FTC, HUD and the Office of Thrift Supervision; creation and review of mortgage loan documentation and disclosures for traditional and nontraditional mortgage and HELOC loan products; federal and California fair lending; expertise in the following statutory and regulatory areas under federal and state law: federal Truth-in-Lending Act and Regulation Z; federal Equal Credit Opportunity Act and Regulation B; federal Home Mortgage Disclosure Act and Regulation C; Real Estate Settlement Procedures Act and Regulation X; federal Home Owners Equity Protection Act as implemented by Regulation Z Section 226.31 et seq.; federal Fair Credit Reporting Act and the FACT Act; federal Gramm-Leach-Bliley Act and the FTC Privacy Regulations; federal Fair Housing Act; federal preemption of interest rates under the Depository Institutions Deregulation and Monetary Control Act of 1980; preemption of state laws regulating ARM and balloon loans under the federal Alternative Mortgage Transaction Parity Act; all California laws and regulations applicable to mortgage lending and servicing; predatory lending laws in California and other states; Mortgage Loan Modification compliance in California for real estate brokers and attorneys

EDUCATION

J.D. May, 1976 (Class Rank: 51/201)
Villanova University School of Law
Villanova, Pennsylvania

B.A. May, 1973 (Phi Beta Kappa)
State University of New York at Binghamton
Binghamton, New York

Attended University of Pennsylvania
as Visiting Student in English Literature
January, 1972 - May, 1973

Philadelphia, Pennsylvania

PROFESSIONAL EXPERIENCE

JUNE, 2008 TO
PRESENT:

LAW OFFICES OF JULIA LEAH GREENFIELD
339 San Marino
Irvine, California 92614

APRIL, 2007 TO
PRESENT

WRIGHT, FINLAY AND ZAK, LLP
4665 MacArthur Court
Suite 280
Newport Beach, California 92660
Of Counsel

JANUARY, 2006 TO
APRIL, 2007

QUICK LOAN FUNDING INC.
535 Anton Boulevard Suite 600
Costa Mesa, California 92626
Senior Regulatory Counsel

JULY, 2002 TO
DECEMBER, 2005

**FINANCE AMERICA, LLC and
BNC MORTGAGE CORPORATION
(WESTERN REGION OF THE MORTGAGE CAPITAL
DIVISION OF LEHMAN BROTHERS BANK)**
16802 Aston Street
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Associate General Counsel

AUGUST, 2001 to
JULY, 2002

LAW OFFICES OF JULIA LEAH GREENFIELD
339 San Marino
Irvine, CA 92614

NOVEMBER, 2000 to
AUGUST, 2001

OPTION ONE MORTGAGE CORPORATION
3 Ada
Irvine, CA 92618
Vice President and General Counsel

FEBRUARY, 1997 to
OCTOBER, 2000

NEW CENTURY MORTGAGE CORPORATION
18400 Von Karman, Suite 1000
Irvine, CA 92612
Vice President and General Counsel

FEBRUARY, 1996 to
JANUARY, 1997

ONE STOP MORTGAGE INC.
200 Baker Street
Costa Mesa, CA 92626
Senior Counsel

JUNE, 1995 to
JANUARY, 1996

HOME SAVINGS OF AMERICA, FSB
Legal Department
4900 Rivergrade Road
Irwindale, California 91706
Senior Counsel

DECEMBER, 1989 to
JUNE 1995

CALIFORNIA FEDERAL BANK
Suite 505, North Lobby
5700 Wilshire Boulevard
Los Angeles, California 90036
Senior Attorney/Real Estate Department/Legal Division

MARCH, 1987 to
NOVEMBER, 1989

BEVERLY HILLS SAVINGS
27271 Las Ramblas
Mission Viejo, California 92691
Vice President and Corporate Counsel

OCTOBER, 1983 to
NOVEMBER, 1986

FAR WEST SAVINGS AND LOAN ASSOCIATION
4001 MacArthur Boulevard
Newport Beach, California 92660
Senior Vice President, Counsel and Assistant Secretary

MAY, 1983 to
OCTOBER, 1983

GOLDBERG AND LACUES
2000 East Fourth Street, Suite 308
Santa Ana, California 92705
Of Counsel to the Firm

SEPTEMBER, 1981 to
JANUARY, 1983

LILLICK McHOSE AND CHARLES
(now PILLSBURY WINTHROP SHAW PITTMAN)
725 S. Figueroa Street
Los Angeles, California 90017
Associate; Of Counsel to the Firm

AUGUST, 1977 to
JUNE, 1981

THE FIDELITY BANK
Legal Department
Broad and Walnut Streets
Philadelphia, Pennsylvania 19109
Assistant Counsel

OCTOBER, 1976 to
AUGUST, 1977

ASTOR, WEISS AND NEWMAN
707 Montgomery Avenue
Narbeth, Pennsylvania 19072
Associate

BAR MEMBERSHIP

State Bar of Pennsylvania (1976)
State Bar of California (1982)
American Bar Association (1977 to Present)
Orange County Bar Association (1983 to Present)

PUBLICATIONS

"TILA Rescission for Trustees" Summer, 2008 *United Trustee Association Quarterly*

"Consumer Credit and Lease Advertising: The Requirements of Truth-in-Lending and Regulation Z," September, 1980 *Banking Law Journal* (Volume 97).

Contributing Author, Federal Regulation of Consumer Credit (Warren, Gorham and Lamont 1981).

"*Credit Advertising Under Truth in Lending Simplification and Revised Regulation Z*," May-June 1983 *Banking Law Journal* (Volume 100).

Contributing Author, The Law of Truth-in-Lending (Warren, Gorham and Lamont 1984).

AMERICAN BAR ASSOCIATION COMMITTEES AND APPOINTMENTS

1981 to PRESENT Consumer Financial Services Committee of the Business Law Section.

1986 to PRESENT Banking Law Committee of the Business Law Section.

1982 to 1988 Commercial Law Articles Editor, Law Practice Notes of the Young Lawyers Division Barrister Magazine.

1981 to 1983 Vice-Chair, Liaison with other Professions and Organizations Committee, Young Lawyers Division; Young Lawyers Division Liaison to the American College of Legal Medicine.

1978 to 1982 Subcommittee on Federal Credit Legislation, Committee on Corporation, Banking and Business Law, Young Lawyers Division.

STATE BAR OF CALIFORNIA COMMITTEE AND APPOINTMENT

June, 2009 Appointed incoming Vice Chair of the Consumer Financial Services Committee of the Business Law Section

2007 to Present Consumer Financial Services Committee of the Business Law Section.
1989-1991

OTHER PROFESSIONAL APPOINTMENTS AND REFERENCES

AUGUST, 2001
TO PRESENT: Governing Committee of the Conference on Consumer Finance Law

MARCH, 2009 Cited by the California Appellate Court as the Expert Witness for the
Plaintiffs in connection with a federal Truth-in-Lending class action
(*Laliberte v. Pacific Mercantile Bank*, 4th Appellate District, Division Three
March, 2009)

PROFESSIONAL ACTIVITIES

NOVEMBER, 2009 Panelist at the Ninth Circuit Court of Appeals Bankruptcy Chief Judges
Conference in Santa Barbara, California discussing TILA Rescission in the
context of *Current Issues In Bankruptcy Litigation*

NOVEMBER, 2009 Panelist at the Eastern District of California Bankruptcy Judges Conference in
Monterey, California discussing TILA Rescission in the context of *Current
Issues In Bankruptcy Litigation*

SEPTEMBER, 2009 Panelist at State Bar of California Annual Meeting Program on *The Mortgage
Crisis and its Impact on Financial Institutions and Consumers*

AUGUST, 2009 Presentation to the Sacramento Bankruptcy Forum on *Loan Modifications in
California*

AUGUST, 2009 Presentation to the California Mortgage Bankers Association Western States
Servicing Conference on “*TILA, RESPA and FCRA: How They Affect
Servicers*”

JULY, 2009 Presentation to the Orange County Bar Association Financial Practices
Section on “*TILA 101: the Nuts and Bolts of TILA*”

JUNE, 2009 Presentation to State Bar of California: “*Loan Modifications in California:
Broker/Attorney Pitfalls and Scams*”

MARCH, 2009 Presentation on Loan Modifications and Forensic Audits at California State
Bar Business Law Section Webinar: “*Focus on the Economy: Recent
Developments in Consumer Credit*”

FEBRUARY, 2009 Presentation to the Los Angeles County Bar Association/Real Estate Section/
Title Insurance Subsection on “*TILA Rescission Liability to Trustees and
Escrow*”

- JANUARY, 2009 Presentation to the State Bar of California Financial Institutions Committee on *Loan Modifications in California*
- DECEMBER, 2008 Presentation to the California Mortgage Bankers Association on *Loan Modifications, the California Foreclosure Consultant Law and Forensic Audits*
- NOVEMBER, 2008 Presentation to the California Society of Enrolled Agents Palomar Chapter/San Diego Region on *Loan Modifications in California*
- NOVEMBER, 2008 Presentation to the Orange County Bar Association/Financial Practices Section on *Loan Modifications in California: Is Anyone in Compliance?*
- SEPTMEBER, 2008 Presentation to the State Bar of California: “*Subprime Lending in Prime Time*”
- AUGUST, 2007 Presentation to the Truth-in-Lending Subcommittee of the American Bar Association Business Law Section Committee on Consumer Financial Services on *Andrews v. Chevy Chase Bank* and trends in current TILA litigation
- MARCH, 2007 Presentation to the Orange County Bar Association Financial Practices Section on the topic: *Anticipating Strategies of Defaulting Borrowers in Current Mortgage Crisis*
- MARCH, 2007 Presentation to Inland Empire Bankruptcy Forum discussing Predatory Lending and Payment Option ARMs
- JUNE, 2004 Panelist and speaker on origination issues at the NHEMA Origination and Servicing Roundtable in Chicago, Illinois
- AUGUST, 2001 Panelist at the Western States Servicing Conference sponsored by the California Mortgage Bankers Association on Current Servicing Issues Affecting Subprime Mortgage Lenders in Las Vegas, Nevada
- NOVEMBER, 1991 Chairperson, Panel on Mortgage Loan Brokers and RESPA Section 8 violations Subcommittee on Housing Finance/Committee on Consumer Financial Services of the Business Law Section/ABA
- AUGUST, 1981 to AUGUST, 1984 California Delegate to the American Bar Association/Young Lawyers Division Assembly.
- APRIL, 1981 Panelist and Speaker, American Bar Association/Young Lawyers Division National Institute on Truth in Lending Simplification and Reform Act.
- FEBRUARY, 1982

NOVEMBER, 1980 Chairperson, American Bar Association/Young Lawyers Division National Institute on Law and Medicine.

1978 to 1979 Lecturer on the Federal Equal Credit Opportunity Act at the Villanova University School of Law and to civic groups.

Thomas B. Pahl is an Assistant Director in the FTC's Division of Financial Practices, where he works on a broad range of consumer credit and financial services issues. He also is an adjunct professor at the George Mason School of Law, as well as a Vice-Chair of the American Bar Association's Section of Business Law, Committee on Financial Services, Federal and State Practices Subcommittee.

In the past, he has served as an attorney advisor for FTC Commissioners Mary Azcuenaga and Orson Swindle, as an Assistant Director in the FTC's Division of Advertising Practices, and as a counsel to the United States Senate Judiciary Committee. He graduated *summa cum laude* with a B.A. in economics from the College of St. Thomas and *cum laude* with a J.D. from Northwestern University School of Law.

California Foreclosure Consultant Law

California Civil Code Section 2945-2945.45

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A. Purpose of Statute (enacted in 1979 and amended in 1980 and 2004)

California Civil Code Section 2945

1. Protection of homeowners in foreclosure from fraud, deception, harrassment and unfair practices of self-proclaimed foreclosure consultants
2. Foreclosure Consultants have charged excessive fees and have historically performed little or no services
3. Homeowners execute an assignment of the surplus of the Trustee's Sale in favor of the Foreclosure Consultant resulting in excessive fees paid
4. Borrowers frequently lose their homes to Foreclosure Consultants who purchase the homes at at fraction of the cost

B. Definition of **Foreclosure Consultant**

California Civil Code Section 2945.1(a)

1. Broad definition includes anyone who assists or offers to assist a homeowner in foreclosure (defined under California Civil Code Section 1695.1 as a residence against which a Notice of Default has been recorded) by contacting the creditor which has filed the NOD on behalf of the homeowner and includes, without limitation:
 - stopping or postponing the sale
 - assisting the homeowner in exercising right of reinstatement
 - assisting the homeowner in obtaining a loan
 - assisting the homeowner in obtaining the remaining proceeds of a foreclosure sale
 - contacting the creditor for any purpose after a Notice of Default is filed
2. The following are exempt from the definition of **Foreclosure Consultant**:

California Civil Code Section 2945.1(b)

 - a. Licensed California attorneys;
 - b. Licensees under the California Residential Mortgage Lending Act;

- c. Licensees under the California Consumer Finance Law
- d. DRE-licensed real estate brokers, provided that no licensed real estate broker can take fees up front
- e. Banks, industrial loan companies, credit unions, insurance companies, licensed title or escrow companies and HUD approved Mortgagees

3. Despite the exemptions listed in 2945.1(b), any person who assists the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale or counsel for the beneficiary, mortgagee or trustee, the remaining proceeds from the foreclosure sale of the homeowner's residence is a Foreclosure Consultant unless he or she is the attorney of the homeowner.

C. Required Provisions in Contracts with *Foreclosure Consultants*

California Civil Code Section 2945.2 and 2945.3

1. All Foreclosure Consulting Agreements ("Agreements") between homeowners and persons defined as and not exempted from the definition of *Foreclosure Consultant* must contain a three day right of rescission (Note: this will be changed to five days as of July 1, 2009 pursuant to AB 180).
2. As in Regulation Z, notice of cancellation given by mail is effective when deposited in the mail (This will be changed to mail, facsimile or electronic mail, effective upon successful transmission as of July 1, 2009 pursuant to AB 180).
3. Section 2945.3 requires the Agreement to specify the services to be performed and the total amount of compensation
 - a. Required language in 14 point bold type:

NOTICE REQUIRED BY CALIFORNIA LAW

- _____(name)_____ or anyone working for him or her CANNOT:
- (1) **Take any money from your or ask you for money until _____(name) has completely finished doing everything he or she said he or she would do; and**
 - (2) **Ask you to sign or have you sign any lien, deed of trust or deed."**

b. Cancellation language similar to Regulation Z is also required to be on the Agreement

c. As of July 1, 2009 pursuant to AB 180, the Agreement must contain the mailing address, electronic mail address and facsimile number of the Foreclosure Consultant

4. As of July 1, 2009 pursuant to AB 180, prior to executing the Agreement, the homeowner must be provided with a copy of the completed Agreement written in any other language used in the communication between the Foreclosure Consultant and the homeowner and in any language described in California Civil Code Section 1632(b) and requested by the consumer.

5. As of July 1, 2009, if English is the principal language used by the Foreclosure Consultant to describe the services rendered, the Foreclosure Consultant must notify the homeowner verbally and in writing before the homeowner signs the Agreement that the consumer has the right to ask for a completed copy of the Agreement in a language described in California Civil Code Section 1632(b) (i.e., Spanish, Korean, Tagalog, Vietnamese and Chinese).

D. Prohibited Practices

California Civil Code Section 2945.4

1. Collecting or receiving any compensation until after the Foreclosure Consultant has performed every service the Foreclosure Consultant has contracted to perform
2. Taking any wage assignment or lien on real or personal property to secure the payment of compensation
3. Receiving any consideration from a third party in connection with services rendered to a homeowner unless the consideration is fully disclosed
4. Acquiring any interest in a residence in foreclosure from an owner with whom the Foreclosure Consultant has contracted
5. Acquiring a Power-of-Attorney from a homeowner
6. Entering into an agreement to assist the homeowner in arranging or arranging for the homeowner, the release of surplus funds prior to 65 days after the Trustee's Sale is conducted whether the agreement involves direct payment, assignment, deed, power of attorney, or assignment of claim from a homeowner to the Foreclosure Consultant or any person designated by the Foreclosure Consultant

E. Penalties for Violation

California Civil Code Section 2945.6 and 2945.7

1. Civil penalties for actual damages, reasonable attorneys' fees and costs, appropriate equitable relief, plus discretionary exemplary damages equal to at least three times the compensation received by the foreclosure consultant for violations of Section 2945.4(a),(b) or (d), plus three times the homeowner's actual damages for violations of Section 2945.4 (c), (e) or (g). in addition to any other award of actual or exemplary damages.
2. Criminal penalties of up to \$10,000 fine, imprisonment in state prison for up to a year, or both

F. Additional Requirements for Foreclosure Consultants as of July 1, 2009 (AB 180)

1. Under Civil Code Section 2945.45(a), the Foreclosure Consultant is required to register with and maintain a certificate of registration from the California Dept. of Justice

a. Registration form must include name, address and telephone number of the Foreclosure Consultant, all of the names, addresses, telephone numbers, email addresses and websites used or proposed to be used by the Foreclosure Consultant, a statement that the person has not been convicted of, or pled nolo contendere to, any crime involving fraud, misrepresentation, dishonesty or violation of the California Foreclosure Consultant Act, a statement that the person has not been held liable under a civil judgment for fraud, misrepresentation or a violation of the California Foreclosure Consultant Act or California Business and Professions Code Sections 17200 or 17500

b. Department of Justice may refuse to issue or may revoke any certificate of registration because of a misstatement in the form, because the Foreclosure Consultant is held liable for a violation of applicable law, including violations of the Foreclosure Consultant Act, or because of failure to maintain the surety bond

2. The Foreclosure Consultant will be required to post and maintain a surety bond in the amount of \$100,000

FORENSIC AUDITS IN CALIFORNIA: ANOTHER CONSUMER SCAM

What is Being Said to Consumers

Consumers are being charged \$1,000.00-\$3,000.00 (possibly more) for self-proclaimed Forensic Auditors, most of whom are not attorneys, DRE or DOC Licensees or compliance professionals, to review an entire package of Mortgage Loan Documents and Disclosures and are promised “a free house” if the reviewer finds even minor violations which consumers are told are “very likely” to be found.

What Are They Looking For?

Violations of the disclosure provisions of the federal Truth-in-Lending Act (“TILA”)(15 USC Section 1601 et seq.) implemented by Regulation Z (12 CFR Section 226.1 et seq.), violations of the federal Home Ownership Equity Improvement Act (“HOEPA”) which is Section 129 of TILA (15 USC Section 1639), implemented by Regulation Z Sections 226.31 and 226.32 (12 CFR Sections 226.31 and 32), and violations of the anti-kickback and servicing provisions of the federal Real Estate Settlement Procedures Act of 1974, as amended (12 USC Section 2601 et seq.) implemented by Regulation X (24 CFR Section 3500.1 et seq.),

How Likely Is it to Find Such Violations?

Contrary to what is being said on loan modification websites and in the press, **very unlikely, especially with regard to HOEPA and TILA numerical disclosure violations**. Remember that Mortgage Lenders which sold or securitized their Mortgage Loans had to meet the due diligence standards of Wall Street Investors. They had the software, the procedures and the compliance and Quality Control teams to ensure that all federal and state Mortgage Loan Disclosures were accurate or they would not have been able to sell or securitize the Mortgage Loans. If errors were found post-closing, the QC departments corrected any errors in accordance with applicable federal and state requirements.

It would also be extremely difficult to find violations of Section 8 of RESPA (the anti-kickback provisions) based on the review of one set of Mortgage Loan Documents and Disclosures.

Can Anyone Determine the Accuracy of the TILA Federal Box Disclosures?

Not easily. Other than determining the accuracy of the Amount Financed by subtracting the Prepaid Finance Charges contained in the HUD-1 from the principal amount of the Mortgage Loan, anyone attempting to review the TILA Federal Box Disclosures for accuracy is going to need to know how to use APR Win or other compliance software or to have an account with ComplianceEase or Mavent.

Unless they are using ComplianceEase or Mavent, they will need to know what constitutes a Prepaid Finance Charge to be able to recognize one on the HUD-1. They would also need to be able to accurately determine the applicable range of Index values at

the time of the loan closing to generate the TILA Federal Box Disclosures for Adjustable Rate Mortgage Loans.

Are There Other TILA Violations That Are Easier to Find But Still Subject to Rescission?

Yes, most definitely. It is far easier for a reviewer to find a *Notice of Right to Cancel* that has blank or incorrect dates in it. Even though these are technical violations, they still entitle the Borrower to rescind up to three years after the loan closing (*Semar v. Platte Valley Savings and Loan Association*, 791 F.2d 699 (9th Cir. 1986)).

Although Borrowers are entitled to rescind their Mortgage Loans if it is determined that each Borrower did not receive two accurately-completed *Notices of Right to Cancel*, it is difficult for a Plaintiff to prove that they did not receive two copies each. It is much easier to prove that they were given inaccurate *Notices of Right to Cancel*.

What Are the Penalties for Such Violations?

TILA Disclosure Violations

Under the new Civil Liability provisions of Section 130(a) of TILA (15 USC Section 1640(a)) as recently amended by the *Mortgage Disclosure Improvement Act of 2008*, the civil liability provisions for individual TILA Disclosure violations are now \$4,000.00 (previously \$2,000.00). Class action liability remains the lesser of \$500,000 or 1% of the creditor's net worth. However, TILA Disclosure violations are subject to a one year statute of limitations.

TILA Rescission Violations

For TILA Rescission violations applicable to owner-occupied non-purchase money transactions under 15 USC Section 1635, the Borrower is entitled to rescind the Mortgage Loan up to three years after the Mortgage Loan closing by returning to the Mortgage Lender the original principal balance minus all of the interest and fees paid at the closing up to the tender of rescission. If, for example, the original principal balance was \$500,000 and the Borrower rescinded after paying \$5,000 in fees at the loan closing and \$50,000 in interest up to the tender of rescission, the Borrower would have to refund to the creditor \$500,000 minus \$55,000 or \$445,000. In this manner, the Borrower would be reimbursed all of the fees and interest paid to the Mortgage Lender/Service.

TILA also provides for attorneys' fees and costs in connection with both Disclosure and Rescission violations.

HOEPA Violations

HOEPA Violations entitle the Borrower to rescind the Mortgage Loan and to damages in the amount of all of the Finance Charges and fees paid.(15 USC Section 1640(a)(4), 15 USC Section 1639(j) and 15 USC Section 1602(u)).

RESPA Section 8 Violations

Violations of Section 8 of RESPA, the anti-kickback provisions, entitle the Borrower to sue for up to three times the amount of the charge for the settlement service involved in the violation, plus attorneys' fees and costs (12 USC Section 2607).

RESPA Section 6 Violations

Violations of the Servicing Disclosure and Qualified Written Request provisions of Section 6 of RESPA (12 USC Section 2605) entitle the Borrower to statutory damages of \$1,000 for an individual action and the lesser of \$500,000 or 1% of the creditor's net worth for a class action, plus attorneys' fees and costs (12 USC Section 2605(f)). The statute requires the Plaintiff to prove that the Defendants engaged in a pattern or practice of noncompliance in order to be awarded statutory damages.

None of these penalties constitute getting a "free loan" or a "free house."

What Statutes of Limitation Apply?

TILA Disclosure Violations

For TILA Disclosure violations, one year from the date of loan closing (15 USC Section 1640(e)). Most subprime and Alt A Mortgage Loans were made more than one year ago which leaves only Rescission under TILA as a viable cause of action for the vast majority of Mortgage Loans.

TILA Rescission

Rescission under Section 125 of TILA (15 USC Section 1635) can be effected up to three years after the Mortgage Loan closing provided that the Borrower has not sold or transferred the home.

HOEPA Violations

The one year statute of limitations under 15 USC Section 1640(e) applies to damages for HOEPA violations. However, the Borrower is entitled to rescind a HOEPA Mortgage Loan up to three years after the loan closing (15 USC Section 1639(j) and 15 USC Section 1602(u)).

RESPA Section 8 Violations

For violations of Section 8 of RESPA which are the anti-kickback provisions, there is a one year statute of limitations.

RESPA Section 6 Violations

For violations of Section 6 of RESPA which include the Servicing Disclosure and Qualified Written Request requirements, there is a three year statute of limitations (12 USC Section 2614). However, with statutory damages of \$1,000 and the fact that the Plaintiff must prove that the creditor had a pattern or practice of noncompliance, the threat of this kind of litigation is not one of great concern to Servicers.

Therefore, the only Disclosure violations that can result in substantial damages to be awarded to a Plaintiff are those disclosure violations that enable a Borrower to exercise their right of Rescission under TILA.

Why Is TILA Rescission Unavailable to Most Borrowers Even If They Find Technical Violations?

Because in order to effect a rescission under TILA in California, the Borrower is required to return the principal amount of the Mortgage Loan minus any fees and interest paid at closing and to the Servicer (See *Palmer v. Wilson*, 502 F.2d 860 (9th Cir. 1974); *Yamamoto v. Bank of New York*, 329 F.3d 1167 (9th Cir. 2003)).

Since most Borrowers today have secured properties that are underwater and/or have credit that is less than stellar, only a tiny fraction of Borrowers are going to qualify for a refinance transaction that would be needed in order for them to pay the principal minus the fees and interest back to the creditor. If they cannot refinance, there is no claim for rescission.

In summary, with the exception of a tiny fraction of Borrowers who have TILA Rescission violations and are able to refinance their Mortgage Loans, Forensic Audits costing \$1,000 or more are a worthless scam.

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LOAN MODIFICATIONS IN CALIFORNIA BROKER/ATTORNEY PITFALLS AND SCAMS

Julie Greenfield
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I. Background, Current Practice and Summary of Compliance Requirements for Legally Negotiating Loan Modifications in California

A. What is a Mortgage Loan Modification?

1. Definition.

In practice, a Modification is an amendment to the terms of the Promissory Note of a residential Mortgage Loan (and in some instances, the Deed of Trust) that results in a reduction of the interest rate and corresponding monthly payments, extension of the term of the Mortgage Loan, conversion of an adjustable interest rate Mortgage Loan into a fixed interest rate Mortgage Loan, the forgiveness of principal, capitalization of arrearages, lowering of margins on adjustable rate loans, deferment of payment and/or other more favorable terms of the Mortgage Loan offered by the Servicer. A Modification is often referred to as a Workout.

2. What is the Most Typical Modification?

Depending on the severity of the Borrower's delinquency, most Servicers will offer to add all delinquency arrearages onto the back of the Mortgage Loan and will re-amortize the new balance at a substantially reduced interest rate, often with interest-only payments for five years.

There is often a step-rate Modification that adjusts upward for five years.(e.g., 3% Interest-only for 24 months, 4% Interest-only for 24 months, 5% Interest-only for 12 months followed by 5% Interest-only for a year). In some instances, the Servicer will modify all of the remaining payments on the Mortgage Loan to 5% fully-amortized for the life-of-the-loan.

More seriously delinquent Mortgage Loans will usually be modified to either a step-rate that become a fixed rate or a fixed rate for the life-of-the-loan.

3. What Are Forbearance Agreements?

Most Servicers today are offering a combination Forbearance Agreement/Modification Agreement because of the high rate of recidivism among Borrowers given a Modification.

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a. Taken from the Government Sponsored Entities: FNMA and FHLMC

b. For three months before a Modification Agreement goes into effect, the Borrower will be required to execute a Forbearance Agreement whereby the Servicer agrees not to foreclose as long as the Borrower makes the Forbearance payments on time. Often these payments are fairly high because they include the arrearages and monies advanced for delinquent taxes, but the payments are usually only for only a three month Forbearance Period. After the Forbearance Period, the Borrower will then be offered a Modification by the Servicer with lower interest rates and payment amounts.

B. What is the Reason Borrowers Need Mortgage Loan Modifications Today?

1. Unprecedented volume of purchase-money and refinance Mortgage Loan Originations totaling in the trillions of dollars of subprime and Alt A Mortgage Loan Originations as a result of very loose residential mortgage lending standards since the mid-1990's
2. Lax lending standards were accepted by Wall Street Investors which purchased and packaged the securitizations (Collateralized Mortgage Obligations)
 - a. 80/20 combos for purchase and refinance Mortgage Loan transactions
 - b. Option ARMS (Alt A Product)
 - (1) Bulk of resets coming due the end of 2009
 - (2) Borrowers could never afford principal balance which is the reason for obtaining a Pay Option ARM
 - (3) Mortgage Brokers were paid a huge rebate and Mortgage Lenders were paid well over par for the sale of Option ARMs
 - (4) Borrowers were never qualified at fully-amortizing rates
 - c. Until 2007, Borrowers could always refinance to pull out more cash to pay off debt and avoid foreclosure
 - (1) House as ATM Syndrome
 - (2) Real estate prices skyrocketed
 - (3) Every truck driver in Corona had a \$700,000 loan
3. Wall Street rating agencies rated the securitizations as AAA
 - a. Thank you Moody's, Standard and Poor's and AIG
4. Regulatory safeguards now in place

- a. TILA – no stated income loans allowed; new rules involving Early TILA Disclosures
 - b. DRE/DOC Nontraditional Mortgage Loan Products
 - c. Bottom Line: we have state of the art locks on the doors but the horse left the barn several years ago
5. Real Estate values have dropped precipitously so that Borrowers cannot refinance their existing Mortgage Loans
 6. Recession Has Caused High Unemployment
 7. Borrowers can no longer afford their payments on high principal balance subprime and Alt A Mortgage Loans and are entering into foreclosure in unprecedented numbers
 8. Servicers voluntarily started Modification programs in 2007 to prevent a tsunami of foreclosures nationwide

C.Are There Limitations Upon the Kind of Modifications Servicers Can Offer Borrowers?

1. **Servicers Owe a Duty of Care to Investors**
 - a.Each Mortgage Loan is governed by the Guidelines of the Servicer (such as Chase, Bank of America, Saxon, National City, Citibank, Wells Fargo, Wamu, etc.) as well as the Guidelines of the Investor
 - b.Each Servicer may have 100 or more different Investors for which they are servicing Mortgage Loans
 - c. Servicers are required to provide Borrowers with the name of the Investor pursuant to 15 USC Section 1636/Section 141 of the federal Truth-in-Lending Act)
 - d. Most Investors are the Trustees of the securitizations that Wall Street packaged and sold to bondholders
 - e. Must look to Pooling and Servicing Agreement for Guidelines on Modifications
 - f. Most Pooling and Servicing Agreements provide that a Mortgage Loan Modification can be effected if there is *imminent danger of default*
 - g. Servicers are at risk for lawsuits brought by the Trustee and/or the bondholders if Modifications do not meet requirements of the Pooling and Servicing Agreement and/or are not in the best interests of the bondholders (ie., principal reductions)

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h. ***Helping Families Save Their Home Act of 2009 (signed into law on May 20, 2009)***

(1) Act creates a safe harbor which denies Investors the right to sue for losses occurring because of participation in the Program if (a) a default on the mortgage occurred or was “reasonably foreseeable;” (b) the home was owner occupied; and (c) the lender reasonably and in good faith believed that more money would be recovered through a Modification or Workout Plan than through a foreclosure

(2) Is this a safe harbor that Servicers are comfortable with?

2 Myth That Servicers Never Want to Foreclose.

a. It is not always true that Servicers want to avoid foreclosure at any cost. If there is equity in the Secured Property, especially in higher loan amounts, Servicers will want to take the property through a foreclosure to maximize the return to the Investor

a. Net Present Value Analysis

D. Do Borrowers Need Attorneys or Licensed Brokers to Assist Them in Getting a Modification?

1. Yes. Most definitely.
2. Servicers are completely overwhelmed and dysfunctional (the “Black Hole Syndrome”)
3. Most Loan Modifications take 3 months but could be longer because different employees are assigned to the files, files get lost in transfer, the same documentation is repeatedly requested by the Servicer
4. Many Attorneys and loan modification companies that have been in the business for at least a year have networks within the Servicers that will assist in getting the file in front of a negotiator and getting results; in addition, they will have a senior manager who will provide status for each loan file on a periodic basis
5. Experienced attorneys and loan modification companies will put the Borrower through a prequalification that will ensure that the Borrower will be entitled to a Mortgage Loan Modification
 - a. Monthly expenses and income need to be roughly equal; too much deficit or surplus will result in a denial of a Modification

6. Borrowers who attempt to get their own loan modification often wind up being on the telephone for hours with no results and no one to contact for status, or with a Forbearance Agreement requiring much higher payments than the Borrower was actually paying before the Forbearance.
7. Advantage of using attorneys is the knowledge of applicable California foreclosure and other laws
 - a. California Civil Code Section 2923.5 (SB 1137 Effective September 6, 2008); possible injunction against nonjudicial foreclosure sale
 - b. Violation of the covenant of good faith and fair dealing
 - c. California Civil Code Section 2923.52 which adds an additional three months to the three month period between filing a Notice of Default and a Notice of Trustee's Sale (effective June 14, 2009).

E. Who is Legally Entitled in California to Negotiate and Effect a Mortgage Loan Modification?

1. Department of Real Estate ("DRE") Licensed Brokers.
 - a. California Business and Professions Code Section 10131(d) provides that a DRE-licensed real estate broker can undertake the following licensable activities: *negotiate loans* and *perform services for Borrowers and Lenders*
 - b. Note that in California, there is no separate license for Mortgage Brokers; real estate brokers have the ability to handle real estate transactions and broker Mortgage Loans
2. Department of Corporations Licensees: Residential Mortgage Lending Act and California Consumer Finance Lender Licensees
3. DOC Licensees are **not** permitted to modify Mortgage Loans other than the Mortgage Loans they are presently servicing in servicing pools
 - a. Political decision because of exemptions for DOC licensees from the application of the California Real Estate Law in California Business and Professions Code Sections 10133.1(a)(6) and 10133.1(a)(1)
 - b. CFL Licensees are also permitted to have Trust Account

c. The California Business and Professions Code Sections 10133(a)(3) and 10133.1(a)(5) setting forth exceptions to the requirement that licenseable activities must be performed by licensed real estate brokers

4. Attorneys have the ability to negotiate contracts in California
(See *Queen of Angels Hospital v. Younger*, 66 Cal.App.3d 359, 136 Cal. Rptr. 36 (1977))

5. DRE has taken the position that any attorney or law firm engaged solely in the practice of negotiating and effecting Mortgage Loan Modifications must have a DRE license

F. Are There Any Limitations and Restrictions Upon Brokers and Attorneys Who Negotiate and Effect Mortgage Loan Modifications?

1. Upon Attorneys

a. DRE takes the position that any processing company which processes and/or negotiates Mortgage Loan Modifications for Borrowers must be licensed as a real estate broker

b. DRE also takes the position that any employee working for an attorney who speaks to Borrowers and to Servicers must be licensed by the DRE

(1) Impermissible interference with the practice of law?

c. California attorneys can modify Mortgage Loans for Borrowers living in California in connection with properties located outside of California; otherwise, attorneys must check with the State Bar of each state in which the Borrower and property are located

2. Upon DRE Licensed Brokers

a. Brokers cannot accept Advance Fees from a Borrower unless they have an Advance Fee Agreement that is approved by the DRE and approval is listed on the DRE Website

b. All Advance Fees must be placed in a Trust Account with disbursements in accordance with the provisions of the Advance Fee Agreement

c. Trust Accounting rules require a verified accounting to be given to each Borrower upon each disbursement and when final fees are disbursed

- d. All persons working for DRE brokers who speak with Borrowers, negotiate with Servicers and/or process financial documentation in pursuit of a Mortgage Loan Modification must be licensed as salesagents under a corporate broker, or as brokers

3. **California Foreclosure Consultant Act** (California Civil Code Section 2945 et seq. See attached outline)

a. DRE Brokers are prohibited from taking advance fees if a Notice of Default has been recorded against the Secured Property; therefore, brokers cannot take on clients who are in foreclosure because of the requirements of the California Foreclosure Consultant Act

- c. This is the reason for brokers seeing alliances with attorneys

4. **SB 94 (Calderon)**

- a. Legislation has the support of the Governor and the State Bar
- b. Will become effective immediately upon signing by the Governor
- c. Provides that any person, including attorneys and DRE licensed brokers with approved Advance Fee Agreements, will be prohibited from accepting or receiving any compensation in advance of performance for loan modification services
- d. Violations will constitute a misdemeanor
- e. Legislation drafted in response to brokers and attorneys who have taken large fees from deperate Borrowers and have not performed any services

G. Can Attorneys and Brokers Work Together to Jointly Offer Loan Modification Services in California?

- 1 Only in limited circumstances

2. Brokers cannot utilize an attorney's license to circumvent the DRE requirements for compliance with the advance fee agreement and trust accounting statutes and regulations

a. Boiler rooms of licensed or unlicensed sales agents "selling" modifications to clients, non-attorneys counseling Borrowers and non-attorneys negotiating with Servicers without any attorney supervision or control is not the practice of law by a law firm

b. Brokers seek unlawful partnerships with attorneys in order to avoid the DRE Advance Fee Agreement and Trust Accounting requirements and to be able to take in advance fees after a Notice of Default is filed under the *California Foreclosure Consultant Act*; attorneys are not restricted as to when fees can be obtained

3. Brokers can market loan modification services on behalf of attorneys
 - a. Advertising must be on behalf of the law firm and not the broker shop.
 - b. Marketing fees paid to brokers cannot be on a per loan modification or transaction basis to avoid fee-splitting issues

4. DRE takes the position that anyone who works for an attorney and who talks to Borrowers and Servicers about loan modifications must be licensed as a broker or sales agent
 - a. Is this impermissible interference with the practice of law?

5. Compensation Paid to Brokers by Attorneys for Processing Services
 - a. Brokers are entitled to compensation for processing services rendered; many attorneys use licensed brokers for processing financials

 - b. To avoid fee splitting issues, some attorneys are requesting payment to be made by the client directly to the processor instead of by the attorney

 - c. DRE takes the position that attorneys cannot pay brokers fees for processing a loan modification for a client the broker refers to the attorney for loan modification services because of the likelihood that fees would be driven up

 - d. DRE has stated that HUD Enforcement in DC has informed them that any fees paid to brokers in connection with a loan modification is considered a referral fee that violates section 8 of RESPA
 - (1) I disagree with this completely. Section 8 of RESPA applies to referral fees paid prior to the closing of a loan transaction; it does not apply after a closing and sale of a Mortgage Loan

II. LOAN MODIFICATION SCAMS

A. False Advertising,

1. Law groups advertising that they have been in business for 25 years

2. Attorneys advertising that they can negotiate loan modifications in all 50 states
 - a. WYZ Law Group attorneys practice in federal court

3. “I can get you 2% interest-only for 30 years”
 - a.No one can guaranty any results when it comes to modification terms
 - b.Interest-only is provided only for a limited time (usually 5 years)

- 4.“We’ll get rid of your second Mortgage – you’ll never have to pay any payments on that again!”
 - a.That can only happen in a Chapter 13 Bankruptcy

5. Principal Reduction
Historically ,this has been a myth to which every Borrower believes that they are entitled but very few have ever received.. It’s not an impossibility but it rarely happens and when it does, it generally only happens on seconds. Nonetheless, the Modification landscape is fluid and constantly changing

- 6.Promising Results and Doing Nothing for Borrowers

B. Brokers using the “Attorney Model” (aka “Attorney-Backed “or “Attorney-Driven”)

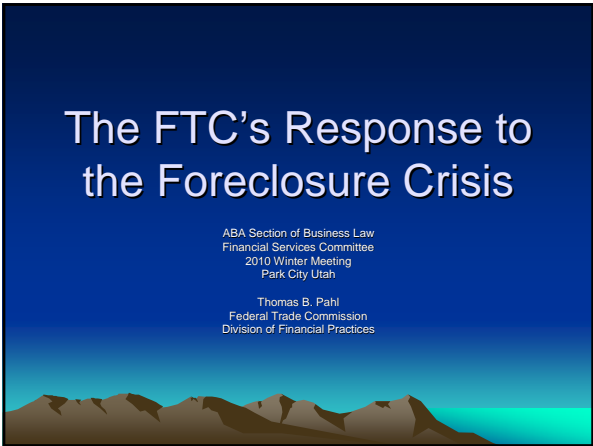
1. Brokers market their broker shop as loan modification experts in conjunction with attorneys who lend their license to the operation.. The Brokers control the entire operation from retaining the clients to negotiating with the Servicers with no or minimal involvement of any attorney. They get around the advance fee agreement and trust accounting rules ostensibly because of their alliance with an attorney

C. Forensic Audits (see handout)

The FTC's Response to the Foreclosure Crisis

ABA Section of Business Law
Financial Services Committee
2010 Winter Meeting
Park City Utah

Thomas B. Pahl
Federal Trade Commission
Division of Financial Practices



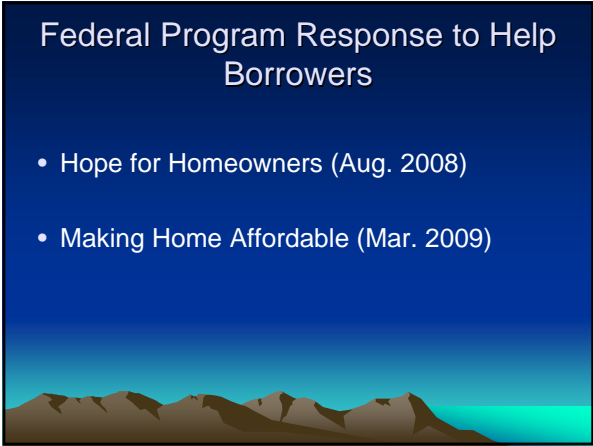
The Foreclosure Crisis

- Rapid Increase in Delinquencies and Foreclosures
- Consumer Problems Dealing Directly with Lenders and Servicers



Federal Program Response to Help Borrowers

- Hope for Homeowners (Aug. 2008)
- Making Home Affordable (Mar. 2009)



Foreclosure Rescue and Loan Modification Service Problems

- Deceptive Affiliation/Endorsement Claims
- Deceptive Success/Efficacy Claims
- Advice to Cease Paying or Communicating with Lender/Service
- Advance Payments
- Deceptive Refund Claims

FTC Consumer Protection Response

- Rulemaking
- Law Enforcement
- Consumer Education

Rulemaking Authority

- Omnibus Appropriation Act of 2009
- Credit Card Act of 2009
 - Unfair and deceptive acts and practices
 - Covering entities within FTC Act jurisdiction
 - Loan modification and foreclosure rescue services

Rulemaking Issues

- ANPR Issued (June 2009)
- Possible Issues in Rulemaking
 - Prohibition on Deceptive Claims
 - Disclosure Requirements
 - Restrictions on Advance Payment
 - Right to Rescind Contracts
 - Attorney and Other Exemptions




Law Enforcement

FTC: 28+ loan modification and foreclosure rescue scam actions in about 18 months


Federal, State, and Local Efforts

- Aggressive
- Comprehensive
- Coordinated



Loan Modification Crackdown (April 2009)

- Joint FTC, Treasury, HUD, and IL AG announcement
- FTC - 5 new actions/11 new in preceding year
- IL AG - 22 total actions
- FTC - 71 warning letters
- Illinois AG – 60 warning letters



Operation Loan Lies (July 2009)

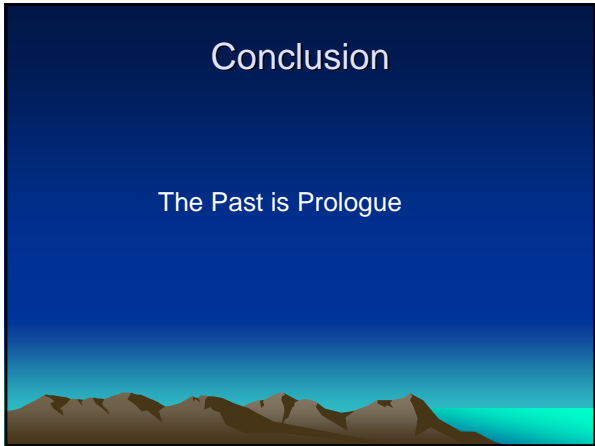
- Joint FTC and CA AG announcement
- FTC – 4 new actions
- In total, 25 federal and state agencies brought 189 actions

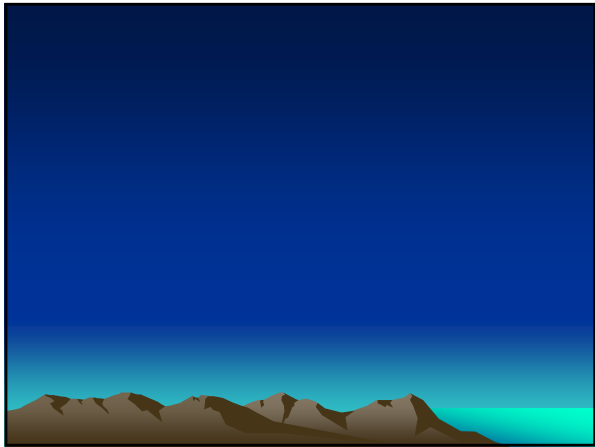
Operation Stolen Hope (Nov. 2009)

- Joint FTC, DOJ, and Nevada AG announcement
- FTC - 6 new actions
- In total, 26 federal and state agencies brought 118 actions

FTC Consumer Education

- Mortgage Rescue Scam Consumer Initiative (Spring 2009)
 - Non-profits, lenders, and servicers distributed FTC written consumer education materials
 - Servicers played FTC-drafted PSAs for callers on hold
- Released “Real People. Real Stories” Video (July 2009)





The Foreclosure Crisis – Where Economic Policy and Politics Collide, No Good Can Come

Summary Overview: An interested outsider spends over a year writing 200 articles based on his in-depth examination of the foreclosure crisis from the perspective of homeowners, economists and politicians... and discusses the outcome for financial institutions, the fallout for the administration, and the future of our nation that will result from what has been and continues to be an abysmal failure in all regards.

1. The Secondary Market Freezes Solid – The free fall in housing prices begins. It will soon take Bear Stearns and then Wall St. investment and commercial banks down. Ratings agencies point finger at investment banks, that in turn blame lax lending standards at lenders, that in turn blame irresponsible borrowers.
2. A Pivotal Mischaracterization – Sub-prime borrowers fall first, but government mischaracterizes problem as being “caused by irresponsible sub-prime borrowers,” and lax lending standards. Result of this mischaracterization a year later will be lack of political support to fix the problem.
3. FASB Pours Gasoline on the Fire – The November 2006 adoption of FAS 157 & 159 pour gasoline on the fire already burning and by Q4, the write-downs begin in earnest. Credit rating downgrades will follow and signal the beginning of the end for AIG, who will ultimately fail at the hands of “collateral calls” related to the Credit Default Swaps insuring the mortgage-backed securities and related derivatives.
4. Paulson Now Sees the Real Problem – Treasury sees the real problem at hand when Bear Stearns fails, but is told not to come to the now Democratic Party controlled Congress until can assure members that “a crisis is at the door.”
5. The Care Bair – FDIC Chair, Sheila Bair introduces some in the country to the idea of loan modifications, but Bush Administration and Treasury Secretary do not support her plan. (Credit Suisse and UBS publish study saying that loan modifications “don’t work” as a result of data showing 60% re-default rates within first year.)
6. The Politics of an Unpopular President – A nation divided over the acts of an unpopular, lame duck president result in a screaming match between the administration and Congressional Democrats, including Rep. Barney Frank, et al. Housing rescue bill finally passes and is signed by president on July 30, 2008... but in addition to being poorly designed, is far too little, too late.
7. The Presidential Election Overshadows Everything – Sen. Barack Obama will be the nominee of the Democratic Party. He will run against Sen. John McCain, who shifts to the right with his choice of Sarah Palin as his running mate. Emotional exuberance surrounding Obama supporters combined with intense polarization of the nation’s voters makes for compelling television and overshadows everything. Homeowners in trouble support Obama as an outsider who will heal the nation... and save their homes.
8. The September Economic Tsunami – The world watches as the titans of Wall Street fall like dominoes. Paulson and Bernanke rush to Congress to assure representatives that “a crisis is at the door.” Paulson tells country that he needs \$700 billion in unrestricted funds or the end of the world as we know it will soon be upon us. First vote fails, but second succeeds. Democrats now working with Republican president, while voting as a block, Republicans oppose bailouts.
9. Lehman Brothers Judged Okay Size to Fail? Paulson can’t find a way to save Lehman. While AIG has adequate collateral for government bailout loan, Lehman does not. Result will place market already freezing, into deep freeze. Commercial paper market locks up overnight.
10. The Failure of TARP – Paulson believes that he can buy “toxic assets” off of bank balance sheets, but soon finds that unless he’s willing to pay 100¢ on the dollar, toxic assets are not for sale. With no time to

put together method for valuation of said assets, Paulson has no option but to pump money into banks via purchases of preferred shares, which do not carry voting rights and look more like debt than equity. Outcome has no potential to impact lending, and is done purely to stabilize financial institutions. This is not explained to the general public, however, who still believe TARP is supposed to stimulate lending.

11. The Inauguration of Barack Obama – Joy and elation abound as what looks like millions of Americans flock to Washington for the inauguration of the 44th President of the United States. What will he do first... the economy is sliding into deflationary spiral.

12. The Debate Over Economic Stimulus Delays Housing – The country's homeowners endure debate over economic stimulus while foreclosures continue to steadily rise. Many are still sub-prime borrowers who are ashamed and largely silent. Most Americans don't care about helping what they've been told are "irresponsible sub-prime borrowers" who shouldn't have been allowed to buy homes in the first place.

13. The Making Home Affordable Speech... Finally – February 20th President Obama gives speech in Arizona introducing his Making Home Affordable plan. The crowd hears things like "principal reductions," and "3% interest rates," and goes wild. Millions go to be that night able to sleep for first time in a year. Obama mentions incentives for banks to modify loans, and bankruptcy judges that will write them down if lenders won't. He also mentions that his plan is designed to help "responsible homeowners".

A few weeks later, Obama will utter the phrase now infamous among homeowners and others: "Loan modifications are FREE! Just call your bank directly, or call the government hotline." Neither of which is true or the least bit effective.

14. Sheila Bair on ABC News in April – The FDIC Chair tells ABC News that president's plan isn't designed and will not stop foreclosures. No one listens, including members of the press. My article: "I'm sorry, Mr. President... That's Simply Not Enough," is posted online following Obama's speech.

15. April 6th – Geithner & Holder Lie on Camera – Treasury Secretary Geithner and Attorney General Holder hold press conference telling homeowners not to hire anyone to assist them with a loan modification because they're all scams. To support the point, the two pull numbers from FBI's 2100 investigations into "mortgage fraud," which is not loan modification fraud. Loan modification fraud numbers are otherwise single digits.

16. A Loan Modification Can Increase Payment Amount? We learn that 60% of loan modifications done in 2008 resulted in payments higher than before modification. Explains why loan modifications haven't worked.

17. Overview of HAMP Qualification Guidelines Released – Homeowners await banks having program in place so they can apply... in droves. Collective sigh of relief felt round the world. Lenders and servicers can't handle volume, lose paperwork repeatedly, and decline almost everyone that applies.

18. Calling Government Hotline a Joke, Calling Bank Directly even "jokier". Homeowners find they are unable to get loan modifications without help from professionals.

19. Lenders and Servicers Resist Homeowners Being Represented by Attorneys and Others – Campaign against anyone offering to help you get a loan modification goes full bore. Everyone told these companies are a scam, but volume at said companies goes through the roof.

20. Enforcement Actions and Legislation Proposals to Stop Scammers – Loan modification industry under siege. Some are scams, but most are not. Government assistance non-existent, and calling bank is worthless endeavor, so homeowners turn to attorneys for help.

21. Lawyers Start to Take Action – Differs by state laws, but more and more homeowners turn to a lawyer for assistance. Banks resist... say they won't talk with attorneys about clients wanting loan modifications. Today, ING has official policy against talking with a homeowner's lawyer about a loan modification.
22. Public Sentiment Starts to Shift as Profile of Foreclosure Victim Changes and Lenders/Serviceers are Exposed – 54% of foreclosures now Prime Loans, not irresponsible sub-prime borrowers, and news comes out that lenders and serviceers aren't modifying loans under HAMP. Report cards in July 2009 show abysmal performance across the board. Lawsuits filed against homeowners against lenders/serviceers increase dramatically.
23. Why Isn't It Working? Media questions "pooling and servicing agreements" as cause. Is it the investors that aren't permitting modifications. Promotes idea that it's only that serviceers are overwhelmed and can't handle volume, but public doesn't buy it. Is incentive to foreclose or to modify?
24. Geithner's Goal – Treasury Secretary has the serviceers come to Washington to be read the riot act. Sets year end goal at 500,000 total... there are already 200,000 trial modifications in place, so 300,000 additional needed by end of year. Within the week, serviceers react and start reporting huge numbers of trial modifications being done under HAMP.
25. Trial Modifications – The Biggest Loan Modification Scam Ever – As of December 1, less than 2,000 have received loan modifications, although more than 600,000 trial modifications in place.
26. Was HAMP for Homeowners or for Lenders?
27. Negative Sentiment Towards Banks Increases, Affects Judges – NY Supreme Court decision, MASS court decision, et al.
28. Political Fallout Now Threatens Democrats in Midterms – Housing crisis is number one issue. Obama runs from bankruptcy reform, allows weakening of credit card reform, and now appears as best friend financial institutions ever had. Millions fume over being abandoned by Obama.
29. The economic impact of the failure of government and financial institutions on the economy. Why the banks are taking it too far. 50% of homes now underwater. More walking away. We are now in a deflationary collapse. Financial institutions are no more viable that one year ago. If they believed their balance sheets, they'd be lending.
30. Fed and Treasury pump trillions into banks to keep them afloat. Obama afraid to use the 'N' word... Nationalization. Homeowners watch as everyone is bailed out but them.
31. Wall St. to Pay Record Bonuses – Would you like a torch or a pitchfork?
32. Future Shock – Both financial institutions and our government are going to be shocked at what they've allowed to happen. Scars cut into this nation won't heal for 50 years.