

CITATION TOOL KIT

WORKING TOGETHER TO PREVENT
LOAN MODIFICATION &
FORECLOSURE SCAMS

A. PURPOSE

This toolkit is a guide for organizations who are sponsoring home loan foreclosure assistance seminars and want to establish working relationships with law enforcement and government agencies in an attempt to protect distressed homeowners attending their seminars from individuals offering illegal or fraudulent loan modification services.

These seminars have become prime opportunities for unlicensed individuals and scam artists to prey on distressed homeowners looking for a way to keep their homes. The biggest abuses are perpetrated by persons who collect upfront fees from borrowers in exchange for the promise of a sustainable loan modification. More often than not, these predators are not licensed. Or, they are real estate licensees who are not in compliance with the real estate law.

This joint consumer protection effort will help target these scammers and deter these fraudulent and illegal activities.

B. Who Should Participate in this Collaborative Effort?

Representatives from the following organizations:

- Local, State, and Federal law enforcement and District Attorney Offices
 - Representatives of these organizations exercise their criminal jurisdictions by detaining and citing individuals who are soliciting attendees in violation of the real estate law.
- A list of all state law enforcement agencies can be found at:
http://crime.about.com/od/agencies/a/agencies_ca.htm

- The Department of Real Estate
 - Representatives of the DRE provide assistance when applying and interpreting the real estate law and recommend action, including the issuance of citations, when appropriate. When requested, DRE representatives can also attend events and provide consumer protection information to attendees.

Other Potential Participants

- Department of Corporations (DOC)
 - Representatives of the DOC can exercise their jurisdiction over DOC licensees who are in violation of the Financial Code. (Consumer Finance Lender licensees are prohibited from doing loan modifications. (California Financial Code 22300.)) www.corp.ca.gov
- California State Bar
 - Representatives of the California State Bar can exercise their jurisdiction over attorneys who are violating State Bar rules when performing loan modification services.
http://www.calbar.ca.gov/state/calbar/calbar_home.jsp

C. Who is Allowed to Perform Loan Modification Services?

- ❖ Negotiating loan modifications requires licensing as either a real estate broker, or as a salesperson properly licensed and working under the supervision of their broker.
- ❖ Attorneys rendering legal services to a client are exempt from the real estate licensing requirement, but this exemption may not be used as a means to circumvent the Real Estate Law.
- ❖ Per California Financial Code Section 22300, no licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is made. The Department of Corporations finds that a loan modification does not involve the making of a loan, and therefore, a lender may not engage in loan modification activity under the authority of the CFLL.

D. Create an Operational Plan

Step 1 - Reaching Out: It is recommended that the entity sponsoring the program reach out to local law enforcement and other agencies to arrange for their participation in the event.

Step 2 - Preparation:

- 1) The sponsoring entity should prepare a statement of intent, which should include the purpose of the seminar and the services to be offered.
- 2) Create an operational plan. This should be a collaborative effort between the sponsoring entity and all participating organizations. The plan should include the following:
 - 1) Provide information as to the specific jurisdictions of each of the participating parties.
 - 2) Set forth the roles and responsibilities of each participating agency so the plan can be executed efficiently. “Communication is key to successful execution.”

Operational Plan, Cont'd:

Step 3 - Execution:

- i) All participating agencies should exercise their specific jurisdiction, while working together in this collaborative effort to investigate violations of real estate law and promote consumer protection.
The violations of the real estate law most relevant to the activity conducted at these seminars include the following:

- **B&P Code 10130** – It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department.
 - It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.
- **B&P Code 10131** – A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more the following acts for another or others:
 - (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

- **B&P 10085 – Advance Fee Agreements and Materials.**

The Commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract, forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used.

- **B&P 10085.5 - Payment of Advance Fee – Loan Secured by Lien on Real Property.** (a) It shall be unlawful for any person to claim, demand, charge, receive, collect or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

- **B&P 10236.4** – (a) In compliance with Section 10235.5, every licensed real estate broker shall also display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors. (b) The disclosures ...shall include the licensee's license number and the department's license information telephone number.
- **B&P 10185** – Violations are Misdemeanors. Any person, including officers, directors, agents or employees of corporations, who willfully violates or knowingly participates in the violation of this division shall be guilty of a misdemeanor punishable by a fine not exceeding \$10,000 or by imprisonment in the county jail not exceeding six months or by a fine and imprisonment.

Operational Plan, Cont'd:

2) When determining if an individual has violated the real estate law, the following information should be obtained and confirmed:

- 1) Name
- 2) Address
- 3) Driver's License Number
- 4) Telephone Number
- 5) Real Estate License Identification Number
- 6) Employer, if applicable

Operational Plan, Cont'd:

- 3) An effective way to confirm license status is to do a license look-up. The DRE website contains a link to the licensee databases of the DRE, DOC, DFI and OREA licensee.

http://www.dre.ca.gov/gen_lic_info.html

- 4) If the individual is licensed and soliciting for advance fees, check to confirm that he/she has received a No Objection Letter from the DRE.

www.dre.ca.gov/mlb_adv_fees_list.html

Operational Plan, Cont'd:

- 5) If an individual is not in compliance with the real estate law, and is either unlicensed or licensed but not in compliance with the law, the following may be applicable:
 - 1) A criminal citation can be issued by the appropriate law enforcement agency, citing the specific violations of the Real Estate Law. This citation could lead to a criminal conviction and/or additional fines and penalties.
 - 2) Licensing agencies can set up investigative cases and evaluate the information received to determine if a violation of the real estate law has occurred. If a violation has occurred, DRE can file a Desist & Refrain Order (for unlicensed activity), or an Accusation (for a licensee), if appropriate.

Tracking Outcomes

- This is a collaborative effort and once the operation has been executed, it is important to keep all lines of communication open and continue to share information with the appropriate parties.
- Follow up enforcement efforts may result, based upon the actions taken.