



## California Department of Real Estate

**\*\* CONSUMER ALERT \*\***

### **FRAUD WARNING REGARDING FORENSIC LOAN AUDITS**

#### **I. FORENSIC LOAN AUDITS (and Claims Regarding Their Use to Avoid Foreclosure and to Modify Home Loans).**

The California Department of Real Estate (“DRE” or “Department”) previously issued a detailed consumer alert and fraud warning on loan modification and foreclosure rescue scams in California. The department continues to administratively prosecute those who engage in such fraud and to work in collaboration with criminal law enforcement authorities to bring such frauds to justice.

On October 11, 2009, Senate Bill 94 was signed by the Governor, and it became effective that day. It prohibits any person, including real estate licensees and attorneys, from charging, claiming, demanding, collecting or receiving an upfront fee from a homeowner borrower in connection with a promise to modify the borrower’s residential loan or some other form of mortgage loan forbearance.

Senate Bill 94’s prohibitions seem to have significantly slowed the rampant fraud that was occurring and escalating with respect to the payment of upfront fees for foreclosure rescue and loan modification work.

But those who prey on vulnerable homeowners have not given up. They just change their tactics and modify their sales pitches to keep taking advantage of those who are desperate to save their homes.

**This alert and warning is issued to call to your attention the often overblown and exaggerated “sales pitch(es)” regarding the supposed value of questionable Forensic Loan Audits. It is critical to note that a loan audit (audit report) has absolutely no value as a stand-alone document.**

Whether they call themselves Forensic Loan Auditors, Certified Forensic Loan Auditors (there are no such certifications in the State of California), Mortgage Loan Auditors, Forensic Attorney-Backed Foreclosure Prevention Auditors, or some other official, important or lofty sounding title(s), there are thousands of individuals and companies that have popped up and appeared all over the State of California. Most of these individuals and companies are unlicensed, and some were previously engaged in illegal foreclosure rescue and loan modification scams.

**The DRE has seen a wide variety of claims and sales pitches, where impressive sounding loan review services are offered with the goal of taking your money.**

Quite simply, the bad players market hope – and all too often, it is false hope.



While there are people and entities in the business of providing residential loan audits that may be legitimate and qualified, you must be cautious and BEWARE.

**\*\*\*DON'T LET FORENSIC LOAN AUDIT FRAUDS TAKE YOUR HARD EARNED MONEY\*\*\***

## **II. QUESTIONABLE AND/OR FALSE CLAIMS OF THE SO-CALLED FORENSIC LOAN AUDITORS.**

### **A. What is a Forensic Loan Audit, Appraisal, or Review?**

Simply put, a forensic loan audit, appraisal or review is an analysis of your mortgage loan file to determine your original lender's compliance with state and federal mortgage lending laws. These include, but are not limited to, regulatory requirements related to interest rates, permissible fees, truth in lending, predatory lending, and permissible loan to value.

### **B. What are the Claims/Sales Pitches?**

They are many and varied, and include:

1. The audit will identify all potential fraud committed by your lender.
2. The audit is guaranteed.
3. The audit is 100 percent free.
4. The audit will show your lender that you are "pro-active".
5. The audit will identify problems with your home loan that support a lawsuit against your lender.
6. The audit will give you the leverage you need to stay in your home.
7. The audit may give you the right to rescind your home loan, or to reduce your principal.
8. The audit will help you modify your home loan. It will give you a step up in the loan modification process.
9. The audit may allow you to stop foreclosure in its tracks.
10. The audit is the key for gaining leverage in lender or investor negotiations.
11. The audit will be performed by "expert" forensic auditors.

### **Discussion –**

Some of the claims above might be true, or have a ring of truth, but you must carefully examine and analyze each and every one of them to determine if a forensic loan audit has any value for you and your situation. Be particularly skeptical of the "100 percent free" claim, since acceptance of the audit may require you to pay for legal or other services.

**There is no statistical or other data that supports the claims that a forensic loan audit, even if performed by a licensed, legitimate and trained auditor, will help you modify your home loan or "stop foreclosure in its tracks". And it is important to note that many audits are done by people with no experience using various software programs.**



There are a few important points to be made here:

First, even assuming that the audit is “favorable” and identifies legal violations by your lender in the loan origination process, your loan may be owned by an investor – that is, someone other than your lender. The investor will most assuredly argue that your claims against your originating lender do not apply against the investor (the purchaser of your loan). And even if your lender still owns the loan, they are not legally required to modify your loan or to halt the foreclosure process if you are behind in your payments. Also, the violations may be minor or inconsequential.

Even if the audit discovers fraud, and/or something more than insignificant violations of federal/state legal requirements, you might have to commence a lawsuit against an investor or your lender. That is costly in terms of court fees, deposition costs, attorneys’ fees, and the like, time-consuming (it can take years), and there is absolutely no guarantee with regard to an outcome. Then there are the costly and time-consuming appeals.

Second, and very importantly, loan modifications are simply not possible for every homeowner, and the loan modification “success rate” is currently very low in California. The available data suggests that loan modifications vary from lender to lender, and investor to investor. Many lenders and investors have guidelines for loan modifications. If your financial situation meets the guidelines, a loan modification is possible with the necessary showing of financial “hardship” on your part. If you do not meet the guidelines, a loan modification may not be possible. It really depends on your lender/investor and your hardship.

This is where the forensic loan audit scammers come in and try to convince you that they offer you “a leg up”. They falsely claim or suggest that they can guarantee to “negotiate” or “leverage” you into a loan modification (or stop a foreclosure in its tracks), make lofty sounding but hollow promises, exaggerate or make bold statements regarding their audit successes, charge you for an audit, and leave you with less money.

**If you pay a fee for a forensic loan audit, and the use of that audit does not result in an long-term and sustainable loan modification, or in a successful and beneficial legal action against –or favorable negotiated resolution with—your lender or the investor who owns your home loan, the forensic loan audit is of absolutely no value to you, and the money you paid for it has been wasted.**

**\*\*\*The Key Here is For You to Be on Guard and Check Them Out (Know Who You Are Dealing With) - Do Your Own Homework (Avoid The Traps Set by the Forensic Loan Audit Frauds)\*\*\*** In addition to looking at the license records of those who claim to be “licensed” to do forensic loan audits, and asking hard and probing questions of those offering the loan audit services, you should contact the Better Business Bureau to see if they have received any complaints about the person or company offering the loan auditing service. But please understand that this is just another resource for you to check, and the



loan audit provider might be so new that the Better Business Bureau may have little or nothing on them (or something positive because of insufficient public input).

If you have become the victim of Forensic Loan Audit fraud, or any other real estate fraud, or if you become aware of such fraud, please file a complaint with the DRE. If the person or company is unlicensed and performing real estate “licensed activities”, the Department will file and serve a Desist and Refrain Order. If the person or company is licensed and performing “licensed activities”, the Department will commence appropriate disciplinary action. Please log on to [http://www.dre.ca.gov/cons\\_complaint.html](http://www.dre.ca.gov/cons_complaint.html).

In addition, please see the DRE’s Consumer Alert and warning on Loan Modification Fraud for a complete list (with contact information) of other law enforcement and public entities where complaints can be filed.

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