



## California Department of Real Estate

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

### **FRAUD WARNING REGARDING LAWSUIT MARKETERS REQUESTING UPFRONT FEES FOR SO-CALLED “MASS JOINDER” OR CLASS LITIGATION PROMISING EXTRAORDINARY HOME MORTGAGE RELIEF**

By Wayne S. Bell  
Chief Counsel, California Department of Real Estate

#### **I. HOME MORTGAGE RELIEF THROUGH LITIGATION (and “Too Good to Be True” Claims Regarding Its Use to Avoid and/or Stop Foreclosure, Obtain Loan Principal Reduction, and to Let You Have Your Home “Free and Clear” of Any Mortgage).**

This alert is written to warn consumers about marketing companies, unlicensed entities, lawyers, and so-called attorney-backed, attorney-affiliated, and lawyer referral entities that offer and sell false hope and request the payment of upfront fees for so-called “mass joinder” or class litigation that will supposedly result in extraordinary home mortgage relief.

The California Department of Real Estate (“DRE” or “Department”) previously issued a consumer alert and fraud warning on loan modification and foreclosure rescue scams in California. That alert was followed by warnings and alerts regarding forensic loan audit fraud, scams in connection with short sale transactions, false and misleading designations and claims of special expertise, certifications and credentials in connection with home loan relief services, and other real estate and home loan relief scams.

The Department continues to administratively prosecute those who engage in such fraud and to work in collaboration with the California State Bar, the Federal Trade Commission, and federal, State and local criminal law enforcement authorities to bring such frauds to justice.

On October 11, 2009, Senate Bill 94 was signed into law in California, and it became effective that day. It prohibited 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 impacted the rampant fraud that was occurring and escalating with respect to the payment of upfront fees for loan modification work.

Also, forensic loan auditors must now register with the California Department of Justice and cannot accept payments in advance for their services under California law once a Notice of Default has been recorded. There are certain exceptions for lawyers and real estate brokers.



On January 31, 2011, an important and broad advance fee ban issued by the Federal Trade Commission became effective and outlaws providers of mortgage assistance relief services from requesting or collecting advance fees from a homeowner.

Discussions about Senate Bill 94, the Federal advance fee ban, and the Consumer Alerts of the DRE, are available on the DRE's website at [www.dre.ca.gov](http://www.dre.ca.gov).

### **Lawyer Exemption from the Federal Advance Fee Ban --**

The advance fee ban issued by the Federal Trade Commission includes a narrow and conditional carve out for attorneys.

If lawyers meet the following four conditions, they are generally exempt from the rule:

1. They are engaged in the practice of law, and mortgage assistance relief is part of their practice.
2. They are licensed in the State where the consumer or the dwelling is located.
3. They are complying with State laws and regulations governing the "same type of conduct the [FTC] rule requires".
4. They place any advance fees they collect in a client trust account and comply with State laws and regulations covering such accounts. This requires that client funds be kept separate from the lawyers' personal and/or business funds until such time as the funds have been earned.

It is important to note that the exemption for lawyers discussed above does *not* allow lawyers to collect money upfront for loan modifications or loan forbearance services, which advance fees are banned by the more restrictive California Senate Bill 94.

But those who continue to prey on and victimize 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. And some of the frauds seeking to rip off desperate homeowners are trying to use the lawyer exemption above to collect advance fees for mortgage assistance relief litigation.

**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 "Mass Joinder" or Class Action Litigation.**

Whether they call themselves Foreclosure Defense Experts, Mortgage Loan Litigators, Living Free and Clear experts, or some other official, important or impressive sounding title(s), individuals and companies are marketing their services in the State of California and on the Internet. **They are making a wide variety of claims and sales pitches, and offering impressive sounding legal and litigation services, with quite extraordinary remedies promised, with the goal of taking and getting some of your money.**



While there are lawyers and law firms which are legitimate and qualified to handle complex class action or joinder litigation, you must be cautious and BEWARE. And certainly check out the lawyers on the State Bar website and via other means, as discussed below in Section III.

## **II. QUESTIONABLE AND/OR FALSE CLAIMS OF THE SO-CALLED MORTGAGE LOAN DEFENSE OR “MASS JOINDER” AND CLASS LITIGATORS.**

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

They are many and varied, and include:

1. You can join in a mass joinder or class action lawsuit already filed against your lender and stay in your home. You can stop paying your lender.
2. The mortgage loans can be stripped entirely from your home.
3. Your payment obligation and foreclosure against your home can be stopped when the lawsuit is filed.
4. The litigation will take the power away from your lender.
5. A jury will side with you and against your lender.
6. The lawsuit will give you the leverage you need to stay in your home.
7. The lawsuit may give you the right to rescind your home loan, or to reduce your principal.
8. The lawsuit will help you modify your home loan. It will give you a step up in the loan modification process.
9. The litigation will be performed through “powerful” litigation attorney representation.
10. Litigation attorneys are “turning the tables on lenders and getting cash settlements for homeowners”.

In one Internet advertisement, the marketing materials say, “the damages sought in your behalf are nothing less than a full lien strip or in otherwords [sic] a free and clear house if the bank can’t produce the documents they own the note on your home. Or at the very least, damages could be awarded that would reduce the principal balance of the note on your home to 80% of market value, and give you a 2% interest rate for the life of the loan”.

### **B. Discussion.**

Please don’t be fooled by slick come-ons by scammers who just want your money. Some of the claims above might be true in a particular case, based on the facts and evidence presented before a Court or a jury, or have a ring or hint of truth, but you must carefully examine and analyze each and every one of them to determine if filing a lawsuit against your lender or joining a class or mass joinder lawsuit will have any value for you and your situation. Be particularly skeptical of all such claims, since agreeing to participate in



such litigation may require you to pay for legal or other services, often before any legal work is performed (e.g., a significant upfront retainer fee is required).

**The reality is that litigation is time-consuming (with formal discovery such as depositions, interrogatories, requests for documents, requests for admissions, motions, and the like), expensive, and usually vigorously defended. There can be no guarantees or assurances with respect to the outcome of a lawsuit.**

**Even if a lender or loan owner defendant were to lose at trial, it can appeal, and the entire process can take years. Also, there is no statistical or other competent data that supports the claims that a mass joinder and class action lawsuit, even if performed by a licensed, legitimate and trained lawyer(s), will provide the remedies that the marketers promise.**

There are two other important points to be made here:

First, even assuming that the lawyers can identify fraud or other legal violations performed 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, absent a court judgment or order, to modify your loan or to halt the foreclosure process if you are behind in your payments. If they happen to lose the lawsuit, they can appeal, as noted above. Also, the violations discovered may be minor or inconsequential, which will not provide for any helpful remedies.

Second, and very importantly, loan modifications and other types of foreclosure relief are simply not possible for every homeowner, and the “success rate” is currently very low in California. This is where the lawsuit marketing 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 stop a foreclosure in its tracks, leave you with a home “free and clear” of any mortgage loan(s), make lofty sounding but hollow promises, exaggerate or make bold statements regarding their litigation successes, charge you for a retainer, and leave you with less money.

**III. THE KEY HERE IS FOR YOU TO BE ON GUARD AND CHECK THE LAWYERS OUT (Know Who You Are or May Be Dealing With) - Do Your Own Homework (Avoid The Traps Set by the Litigation Marketing Frauds).**

Before entering into an attorney-client relationship, or paying for “legal” or litigation services, ascertain the name of the lawyer or lawyers who will be providing the services. Then check them out on the State Bar’s website, at [www.calbar.ca.gov](http://www.calbar.ca.gov). Make certain that they are licensed by the State Bar of California. If they are licensed, see if they have been disciplined.



Check them out through the Better Business Bureau to see if the Bureau has received any complaints about the lawyer, law firm or marketing firm offering the services (and remember that only lawyers can provide legal services). And please understand that this is just another resource for you to check, as the litigation services 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).

**Check them out through a Google or related search on the Internet. You may be amazed at what you can and will find out doing such a search. Often consumers who have been scammed will post their experiences, insights, and warnings long before any criminal, civil or administrative action has been brought against the scammers.**

Also, ask them lots of specific, detailed questions about their litigation experience, clients and successful results. For example, you should ask them how many mortgage-related joinder or class lawsuits they have filed and handled through settlement or trial. Ask them for pleadings they have filed and news stories about their so-called successes. Ask them for a list of current and past “satisfied” clients. If they provide you with a list, call those people and ask those former clients if they would use the lawyer or law firm again. Ask the lawyers if they are class action or joinder litigation specialists and ask them what specialist qualifications they have. Then ask what they will actually do for you (what specific services they will be providing and for what fees and costs). Get that in writing, and take the time to fully understand what the attorney-client contract says and what the end result will be before proceeding with the services. Remember to always ask for and demand copies of all documents that you sign.

#### **IV. CONCLUSION.**

Mortgage rescue frauds are extremely good at selling false hope to consumers in trouble with regard to home loans. The scammers continue to adapt and to modify their schemes as soon as their last ones became ineffective. Promises of successes through mass joinder or class litigation are now being marketed.

Please be careful, do your own diligence to protect yourself, and be highly suspect if anyone asks you for money up front before doing any service on your behalf. Most importantly, **DON'T LET FRAUDS TAKE YOUR HARD EARNED MONEY.**

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