



Consumer and Industry Warning: False and Misleading Designations and Claims of Special Expertise, Certifications and/or Credentials

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I. Introduction

In the Fall 2010 edition of the Real Estate Bulletin, Real Estate Commissioner Jeff Davi, in his message to readers (see "What's on your Card?"), raised important legal and ethical issues and provided some guidance regarding the use of specialty designations by licensees of the California Department of Real Estate (DRE).

The DRE has issued prior warnings and alerts to consumers and licensees alike about the flood of fraud in connection with pre-foreclosure and foreclosure-related rescue, forbearance and forgiveness services on behalf of financially distressed homeowners, including loan modifications, forensic loan audits, and short sales.

The DRE has noticed an increase in the use of questionable and possibly misleading terms such as "expert", "certified", and "specialist" in the marketing and advertising of assistance to anxious homeowners in connection with their home loans and foreclosure rescue services and short sales. A growing number of individuals and companies, many of whom are unlicensed, purport to be "experts" in the area of short sales, "certified" forensic loan auditors, short sale "specialists", loan modification "specialists", loss mitigation "experts", "fraud investigators", and the like, and many of these designations and claims seem to be nothing more than marketing ploys by unscrupulous fraudsters to capitalize on the desperation and vulnerability of unsophisticated and/or financially strapped homeowners.

Moreover, there are an increasing number of companies offering expensive courses, materials and "leads" that have no meaningful or substantive content and which are designed to allow those who pay for the same to claim they have "certifications" – which are, in effect, worthless. Licensees should be cautious and only choose reputable courses, with quality content, for certification.

The purpose of this warning is (i) to alert consumers about the rise of the use of fictitious and misleading information in advertising and solicitation materials (including Internet ads and sites), which is evidently done to persuade homeowners to use those advertisers/solicitors' services, (ii) to give some advice on how to check out such information and claims, and (iii) to remind California real estate licensees of the laws that apply in this area and other relevant considerations.

II. Background Discussion

In the Commissioner's message referred to above, it was noted that the DRE does not issue any special designations. However, there are well-respected and nationally known



organizations, councils, and institutes that provide designations and certifications which acknowledge experience, specialization or expertise in a multitude of real estate sectors.

Claims of special expertise, specialization and certification are lawful and permitted if they are accurate and can be substantiated. This warning is not concerned with those licensees who have completed sufficiently rigorous specialized programs and hold legitimate designations from well-known and respected entities.

Rather, this warning is concerned with those individuals and companies who make untrue, fictitious, overstated, and misleading claims about their expertise, level of training and experience, and skills in an effort to persuade unsuspecting homeowners to retain and pay for real estate and home loan services for which the bad actors are or may not be qualified.

III. What Consumers Can Do

The best advice to consumers is that you need to be wary and cautious when thinking about retaining the services of people or companies calling themselves "specialists", "experts", or "certified" in the areas of mortgages, lending, foreclosure rescue, and real estate.

Check out prior alerts and warnings of the DRE, and note that you are wise to never pay for such services in advance. In addition, you can do some of the advertised services yourself. In other cases, such as with forensic loan audits, there is a serious question about the value of such services. In still other cases, there are free services that might be available to you through HUD-certified housing counselors.

If you still choose to use the services of third parties for a fee(s), ask them questions, lots of questions, and then verify, verify, and verify some more. Check them out on the DRE website, at www.dre.ca.gov. If they are lawyers, check them out on the State Bar's website, at www.calbar.ca.gov. Check them out through the Better Business Bureau. Check them out through a Google search on the Internet.

The point here is that you need to view the claims of expertise, certification, and specialization with a critical eye, verify the claims, and ask specific, detailed questions.

A. Suggested Questions to Ask (This List is Not Exhaustive, But It Will Give You Good Information on Which You Can Make a Reasoned Decision)

1. How many transactions or services of the type you are advertising have you successfully performed? Ask them to give specifics and contacts.
2. Do you have a list of your last ten customers? If so, get it and call them. Do your own background check. And note that even if the person or company is "highly



recommended" by so-called satisfied customers, the risk of a scam is not eliminated entirely.

3. Are you licensed by the California Department of Real Estate? If not, why not? What exemption from the licensing laws do you claim? If they are licensed, check to see if they have been disciplined by the Department (go to www.dre.ca.gov).
4. What qualifies you as an expert? How did you get that expertise?
5. You state that you are a specialist. What specialist qualifications do you have and what does that mean?
6. You say that you are certified. Who issued the certification? Do any government entities or recognized industry trade groups (such as the California Association of Realtors and the National Association of Realtors) recognize the certification? If so, which ones? Then you can and should verify that information.
7. What course of study did you undertake to become certified or specialized?
8. What are the requirements for certification or specialization?
9. How many hours of coursework were involved?
10. What professional organization gave you the designation or certification? And when were they formed? If they give you a name, check out that entity with the California Secretary of State, Better Business Bureaus, with the California Association of Realtors, and see if any complaints are noted through a Google search.
11. When did you get the designation?
12. Did you take an examination? If so, who conducted the test, how long was the examination, and when did you take the examination?

IV. Information for Real Estate Licensees

As noted in the Real Estate Commissioner's message, there are two California code sections that provide some direct guidance with respect to the issue of designations and certifications.

The first is section 10177 (c) of the California Business and Professions Code. It provides in relevant part that disciplinary action may be taken against a real estate licensee where the licensee "[k]nowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business..."



The second is section 10177 (e) of that same code. It provides that discipline against a licensee is appropriate where the licensed person "[w]illfully used the term 'realtor' or a trade name or insignia of membership in a real estate organization of which the licensee is not a member".

If you are aware of violations of the above provisions of the Real Estate Law by licensees, please report the same to the Enforcement section of the DRE for investigation and appropriate action. If you are aware of outright false or misleading claims of expertise, specialty or credentials by unlicensed people or companies, or real estate licensed activity by unlicensed persons, please report those to DRE as well, and we will issue Desist and Refrain Orders where appropriate, and/or make referrals to other government administrative or criminal prosecutorial agencies.

Depending on the nature of the fictitious and misleading information, there might be grounds for disciplinary action, civil liability for unfair business practices, intentional misrepresentation, negligent misrepresentation, false advertising, or other causes of action, and/or criminal prosecution for a number of counts, including, without any limitation, mail fraud, wire fraud, grand theft by false pretenses, and conspiracy.

V. Conclusion

Fraud by predators in the use of false and misleading designations, certifications, claims of expertise and specialization can certainly compromise and erode the credibility and integrity of those with legitimate credentials.

Oftentimes, the use of lofty-sounding but fictitious and/or misleading designations is just part of a marketing scheme targeting homeowners who are in desperate need of help.

The real estate and mortgage marketplace needs to be free from material representations and misleading statements by individuals and companies with regard to their backgrounds, skill levels, experience and expertise.

Consumers must be wary and do their homework. And real estate licensees must make certain that they comply with the California Real Estate Law and that all advertisements and offers of services contain only truthful and accurate information.

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