Loan Foreclosure Fraud

The information below may be general in nature. To address your own situation seek professional legal, real estate, and/or financial advice from a licensed and experienced person(s).

Potential Scams and What to Do

Q1. What are the signs of loan modification scams?

Asking for and collecting fees upfront is a huge red flag. California law prohibits upfront fees for loan modifications (see B&P Code section 10085.6 and Civil Code section 2944.7).

If you are asked to sign something up front that requires a notary stamp or includes the words "Quitclaim," "conveyance," "All Inclusive Deed," "Assignments of Rent," or anything that appears to be a legal transfer of title that may ultimately be recorded, stop!

All you are doing is asking for help to modify your loan. You do not need to give up any interest, title, or even partial ownership to anyone to do that.

Q2. What recourse does a homeowner have if they are the victim of loan foreclosure fraud?

The homeowner should:

1. File a complaint with the Department of Real Estate against the business and the owners that perpetrated the fraud
2. File a complaint with their local police
3. File a complaint with the District Attorney's Consumer Protection Unit.

Q3. What should I do if I suspect I've already given a "scammer" money to help with a loan modification?

You should immediately file a complaint with the California Department of Real Estate. Then, contact the supposed scammer and demand a refund for the payment previously made. In addition, contact local law enforcement (i.e., the police or DA) about the possibility of filing charges for unfair/unlawful business practices, grand theft, and/or conspiracy to commit a crime. You can also file a complaint with the Better Business Bureau and may be able to take the alleged scammer to small claims court to try and recover the money paid.

If you cannot contact your lender directly to work out a loan modification, look to a trusted, licensed, and legitimate advisor, such as an attorney or licensed real estate broker, and/or contact a HUD-approved counselor for assistance.

Loan Modification

Q4. If a lender is considering a loan modification, how important is the borrower's story about they need that modification?

The borrower's story is extremely important, as it personalizes the loan modification application. Lenders receive hundreds of thousands of requests to modify home loans and it is important for a borrower to distinguish themselves from others. The only way to do this is by explaining the circumstances that have led the borrower to request a loan modification.

Q5. Why should a homeowner try to modify their loan as opposed to letting the property go into foreclosure or filing bankruptcy?

A loan modification allows a homeowner to keep their home. However, this is conditional on the homeowner's ability to continue making reduced monthly payments to a lender under the terms of the modification.

Q6. If I am in the process of modifying my loan, should I stop making payments?

Loan scammers often try to get their victims to stop making payments and stop contacting their lender directly. This may result in the homeowner having no communication with the lender of their loan. Do not fall for this!

Keep in contact with your lender, and keep in contact with your licensed or HUD- approved representative -- if not daily, at least every other day, to be sure that things are moving in the right direction. If you stop making payments you may find in a few months that the bank has already initiated foreclosure and you were unaware.

Be very careful with anyone who advises you to stop making payments.

Q7. What kind of information will a bank need to modify a loan?

Generally, they will need most if not all the same information they needed to make the loan. If you used a limited or no documentation or "easy qualifier" (no income verification) process originally, they may require more than what you originally provided, so be prepared. Have the information ready and be sure it is accurate.

Q8. Is there something I can do if the bank is giving me the run around or not responding to loan modification requests?

The key here is to be tenacious.

Lenders and servicers are large companies with hundreds, and even thousands, of employees. Before you call your lender, expect to be on the phone for some time and have your loan information ready and something to write with. The first person you speak with will likely be a customer service representative who will try to collect any arrears you may have. Tell them that you are calling to request a loan modification and ask that they direct you to the right division within the lender's institution.

You need to get to the "loss mitigation," "asset division," or "foreclosure prevention" division (or whatever the lender calls the section dealing with loan modifications). Once they give you the name of that division, write it down! Also, ask if there is a direct number for that division. If yes, write it down! Then ask to be transferred to that division.

When you talk to someone in that division, just tell them you are looking to discuss a loan modification and ask if you have reached the correct division within the institution. If they say yes, then before you tell them your story, ask for their full name and return telephone number with extension and write it down (most every lender has multiple extensions, so be diplomatic).

Once you know you're talking to the correct person explain your situation. Be sure to listen to their response and make notes about what documentation you need to provide and where it needs to be sent and in what format, etc.

At this point, you are basically starting to build your case and trying to get the lender to agree to modify your loan. Make certain to ask the individual what you should expect from the process, how long it takes, how you should best communicate in the future, etc.

Note that if you ask for a loan modification or other foreclosure prevention plan, your servicer must assign you one point of contact to assist with the application process, notify you of missing documents and update you on the status of the application (see Civil Code section 2923.7).

Q9. Can I modify a loan if I have already received a foreclosure notice?

Yes, you can modify your loan right up until the trustee's sale occurs. But remember, you should not pay any upfront fees to anyone offering or performing loan modification services.

Q10. If I have a first and a second mortgage on my house, can I modify one or the other (or both)?

You will likely need to modify both. This means twice as much work and likely two different lenders. Remember, a loan modification is another agreement between the parties to change the terms of the original contract. Your qualifications may determine that you are *eligible* for a loan modification, but the borrower or lender must be willing to enter into a modification.

Note that before a loan servicing company can start the foreclosure process, they are required to contact you to discuss your financial situation and explore your options to avoid foreclosure (see Civil Code sections 2923.55 and 2924.9).

Q11. Are there laws to get lenders to uphold their promises and work with homeowners to modify their loans?

The California Homeowner Bill of Rights is a set of laws that protect homeowners facing foreclosure. Key provisions include:

- **Notification of foreclosure-prevention options:** Servicers must try to contact borrowers at least 30 days before starting the foreclosure process to discuss the borrower's financial situation and explore their options to avoid foreclosure (Civil Code sections 2923.55, 2924.9).
- **Guaranteed single point of contact:** Borrowers requesting a loan modification or other foreclosure-prevention option must be assigned a specific person or team to walk the borrower through application requirements and deadlines, update them about the status of the application, and inform them about missing documents needed to complete the application (Civil Code section 2923.7).

- **Acknowledgment of application:** Borrowers applying for a loan modification must be contacted by a servicer within five business days of any missing information, other errors, and deadlines for completing the application (Civil Code section 2924.10).
- **Restrictions on fees:** Borrowers cannot be charged a fee by the loan servicer for applying for a loan modification.
- **Restrictions on dual tracking:** Servicers cannot pursue a foreclosure at the same time they are working with borrowers on a loan modification, forbearance, repayment plan, or other foreclosure prevention option (Civil Code sections 2923.6, 2924.11).
- **Denial rights:** If a servicer denies a loan modification application, it must state its reasons and identify other possible foreclosure prevention options in writing. It must also give the borrower a chance to appeal the denial (Civil Code section 2923.6).

Bankruptcy

Q12. In a bankruptcy, can a second mortgage be settled as well?

In bankruptcy, most secured lenders will seek relief from the automatic stay in order to foreclose on the home. Typically, the holder of the first mortgage is the entity seeking such relief.

The holder of a second mortgage has the right to foreclose, but usually will not pursue foreclosure if the property has negative equity. If the second mortgager does not seek to enforce its rights to the home in a bankruptcy proceeding, then it is possible to wipe out the second mortgage through bankruptcy.

Q13. Do I have to pay the difference between what my lender receives from a foreclosure or short sale of my property and what is owed on my mortgage (also known as a deficiency judgment)?

Generally, there are no deficiency judgments after a foreclosure or short sale in California. This means that the lender is only entitled to receive what they make in the foreclosure or what they accept in the short sale.

Short Sales

Q14. Are investment properties exempt from short sales?

No. Any property can be a candidate for a short sale. All you need is a willing lender and a willing borrower to agree to a short sale for it to occur. This can happen with owner-occupied property, investment property, or even commercial property.

Legal Services and Third Party Assistance

Q15. If I hired a law firm to help me modify my loan, can their administrative (non-attorney) staff help with the modification or do they have to be separately licensed?

Non-attorneys can assist, but they must be properly supervised by an attorney. The non- attorney cannot give legal advice or otherwise engage in conduct constituting the practice of law.

Q16. Are there laws that regulate attorneys who advertise loan modification services?

California law prohibits attorneys from charging advance fees or collecting any compensation until after they fully perform the services they contracted to perform.

Q17. Besides the prohibition against collecting advance fees, are there any other limitations on attorneys helping clients modify their home loans?

No, other than the general ethical duties applicable to the legal profession.

Q18. I understand the State Bar is concerned about attorneys providing loan modification services. What are the specific concerns?

In many cases, attorneys can provide useful services in helping clients obtain loan modifications. The State Bar becomes involved when there are allegations of misconduct, including: 1) collecting advance fees; 2) recklessly failing to provide competent legal services; 3) splitting legal fees with non-attorneys; 4) entering into improper partnerships with non-attorneys; 5) assisting non-attorneys in the unauthorized practice of the law; 6) charging unconscionably high legal fees; and 7) using false or misleading advertising.

Q19. When licensees (attorneys, real estate agents, etc.) enter into agreements on loan modifications, does each agreement have to be individualized or can they be standardized for all customers?

The State Bar does not require a specific format for legal fee agreements. However, it may be better practice to provide individualized fee agreements so that the client knows what services they will receive. Specific formats also prevent confusion and help minimize future malpractice actions against the attorney.

Q20. I'm facing foreclosure. What should I keep in mind when seeking help from a third party?

Begin by contacting your lender to discuss various options, including a loan modification. Before finalizing anything, review your situation with a trusted advisor or friend who is a licensed real estate agent or an attorney familiar with real estate finance, lending, and loan modifications. If you don't know someone like that, seek out the most reputable real estate broker with mortgage lending experience, and check that person's license status along with their references. You may also want to interview several of their past clients, if possible, to determine if they are the right loan service provider for your situation. You can also contact a HUD-approved certified counselor for assistance.