

A CONSUMER GUIDE TO MORTGAGE-RELATED COMPLAINTS



Real Estate MATTERS

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INTRODUCTION

Even after you have done your due diligence as a consumer in obtaining a home loan, unexpected issues may arise. It is often difficult to determine what course of action to take and whom to contact.

The purpose of this booklet is to provide basic information about loan servicers, lenders, mortgage brokers, complaints, and contacts.

WHO IS MY LENDER?

Your lender is the person/entity that loaned you the funds you borrowed and has a mortgage on your property to secure the loan repayment. In California, your promise to repay the lender is ordinarily in the form of a promissory note, and the mortgage is ordinarily in the form of a deed of trust that is recorded as a lien against your property to act as security for payment. Your lender appears as the beneficiary on the deed of trust.

As you are going through the process of getting your loan, you will know who your lender is by the various disclosures that are provided to you. Lenders can be private individuals, mortgage brokers, mortgage bankers, credit unions, banks, etc. There are different advantages to each type of lender, so – before you get the loan - make certain you carefully select which lender will be most appropriate and beneficial for your situation.

WHAT SHOULD I DO IF I HAVE A DISPUTE WITH MY LENDER?

Most lender disputes have to do with loan servicing, which is discussed later. However, if you have a dispute with the lender, attempt to contact the lender directly.

Many lenders have a toll-free customer service number. Call that number and explain the problem. Be sure to have your loan number and pertinent documents in hand before calling. Document the call by writing down to whom you spoke, the date and time of the call, and what was promised. If the customer service representative is unable to immediately resolve the problem, be sure to ask for follow-up action and ask when you might expect a call-back or a timeframe in which the problem will be resolved. After speaking with a customer service representative, or if you are unable to successfully contact

the lender by telephone, send a letter to your lender. In your letter, state what the problem is and what you wish the lender to do about it; make sure you are specific. Keep a copy of your letter. Confirm in writing any telephone conversations with the lender. If you send documents, make certain they are copies and not the originals.

WHAT SHOULD I DO IF I HAVE A COMPLAINT AGAINST MY LENDER?

Each type of lender must abide by lending laws, but oversight and enforcement of those laws are accomplished through different entities.

If you believe your lender violated usury laws (illegal interest rates), you should contact an attorney, as usury laws are quite complex. You can also file a complaint with the government agency that oversees the lender. Remember: do not send original documents with the complaint.

If your lender is a private person or entity (that is, not a broker, banker, or financial institution), you should consult with an attorney, as there is likely no government agency that oversees that private lender.

If your lender is not a private person or entity, you should contact the government agency that oversees that lender. That agency will be able to determine if it has the ability to intervene in the dispute, help remedy the problem, or take appropriate action. If the government agency does not have the ability to do any of the foregoing, you should consult an attorney.

The following is a list of different types of lenders and their overseeing government agencies (contact information for each can be found at the end of the booklet):

Banks

- If the name of your bank contains the word “National” or has the initials “N.A.” after it, it is a national bank. Contact the federal Office of the Comptroller of Currency.

Savings and Loans

- If the name of your savings and loan contains the word “Federal” or the initials “F.S.B.” or “F.A.” after it, it is a federal

savings and loan association or bank. Contact the Office of Thrift Supervision.

State-Licensed Banks and Savings and Loans

- If the bank or savings and loan is licensed by the state it is not or may not be regulated by the federal agencies. Contact the California Department of Financial Institutions.

Credit Unions

- If the name of your credit union contains the word “Federal”, it is a federal credit union. Contact the National Credit Union Administration.
- If not, it is a state-licensed credit union. Contact the California Department of Financial Institutions.

Industrial Loan Companies

- If your lender is an industrial loan company, also known as “thrift and loan”, it is state-licensed. Contact the Department of Financial Institutions.

Mortgage Bankers, Lenders, and Brokers

- If your lender does not fit any of the above, go to the Department of Real Estate’s web site at www.dre.ca.gov. Click on the icon for California Real Estate and Financial Services License Information to obtain license information for the lender.
- Your lender may be a mortgage banker, California finance lender, or residential mortgage lender. If so, it is state-licensed as a banker or lender. Contact the Department of Corporations.
- A lender may be a real estate broker and licensed by the state. Contact the Department of Real Estate.

WHO IS MY LOAN SERVICER?

The person who collects your loan payments is often referred to as the loan servicer or authorized servicer. A borrower generally does not have the ability to select the loan servicer; the servicer is selected by

the lender. Sometimes the lender is the loan servicer, other times, the servicing is contracted to a third-party, and occasionally, the mortgage broker services the loan. Note that if the servicing responsibility for a loan is to be (or has been) transferred, both the current and new servicer must notify the borrower of the change and its effective date.

In addition to collecting your loan payments, your loan servicer will also impose charges if your payment is late, if the promissory note contains such a provision. For some home loans, the law allows a late charge of up to 10% per installment. It is very important to make all your payments and to make them on time.

Your loan servicer is also responsible for releasing the lien when your loan is paid in full, pursuing foreclosure if you are delinquent in payments, and paying property taxes and insurance through your escrow or impound account (if applicable).

Your lender will provide information about your loan servicer. You may receive payment coupons or monthly notices. Your servicer will be the entity to whom you are sending loan payments.

WHAT SHOULD I DO IF I HAVE A DISPUTE WITH MY LOAN SERVICER?

As with any disputes with your lender, if you have a disagreement with the authorized servicer about your loan, contact your loan servicer to try to resolve the problem.

Most loan servicers have a toll-free, customer service number. Call that number and explain the problem. Be sure to have your loan number and pertinent documents in hand before calling. Document the call by writing down to whom you spoke, the date and time of the call, and what was promised. If the customer service representative is unable to immediately resolve the problem, be sure to ask for follow-up action and ask when you might expect a call-back or a timeframe in which the problem will be resolved. After speaking with a customer service representative, or if you are unable to successfully contact the servicer by telephone, send a letter to the servicer, at the address for correspondence indicated on your monthly statements. In your letter, state what the problem is and what you wish the servicer to do about it. Make sure you are specific. Keep a copy of the letter. If your payment wasn't credited, give the account number, amount, date, and number of the check. Do not send your original documents

such as canceled checks. Keep all the originals and send copies with your letter. Confirm in writing any telephone conversations with the servicer.

The Real Estate Settlement Procedures Act (RESPA) requires the servicer to acknowledge your request within 20 business days and to try to resolve the problem within 60 business days. You may have certain rights such as the right to file a civil lawsuit against the servicer if the service violates the RESPA requirements.

If you are facing financial hardship, are facing foreclosure, need to sell your property, or the like, the authorized servicer and/or your lender may be the appropriate contact. For more information about financial hardship and foreclosure, please read the Department of Real Estate's:

A Homeowner's Guide to Foreclosure in California which is available at www.dre.ca.gov.

Regardless of the nature of the loan servicing problem, it is important to continue to make your scheduled monthly payments on time in order to avoid a potential default on the loan and risking foreclosure.

WHAT SHOULD I DO IF I HAVE A COMPLAINT AGAINST MY LOAN SERVICER?

As with lenders, there are a variety of licenses or authorities under which a loan servicer can service a home loan.

If correspondence to your servicer is not acknowledged or the problem is not resolved within the time frames required by RESPA, you may file a complaint with the U.S. Department of Housing and Urban Development (HUD). You may also wish to consult an attorney for possible civil remedies. A sample letter to your loan servicer can be found at HUD's web site at www.hud.gov/offices/hsg/sfh/res/reslettr.cfm.

The following is a list of government agencies overseeing servicers (contact information for each can be found at the end of the booklet):

- If your lender is the loan servicer, follow the previous list for lenders and their overseeing agencies.

- If your servicer is not the lender, it is likely licensed in California.
- To determine which agency, check the license status on the Department of Real Estate's web site at www.dre.ca.gov and click on "California Real Estate and Financial Services License Information". The servicer will be licensed by the Department of Corporations, Department of Real Estate, or Department of Financial Institutions.

WHO WAS MY MORTGAGE BROKER?

Mortgage brokers help you obtain a home loan that will best suit your needs.

If you worked with a mortgage broker, your mortgage broker will have been the person that was not the lender but helped you get a loan. A mortgage broker would have taken your loan application, reviewed your options with you, and provided a disclosure statement of the costs and fees associated with the loan. The broker's name will appear on that disclosure statement and on other loan documents such as the final settlement statement as having received a loan origination fee or commission.

WHAT SHOULD I DO IF I HAVE A COMPLAINT AGAINST MY MORTGAGE BROKER?

A mortgage broker has a fiduciary duty to you as the borrower. This fiduciary duty includes a requirement that the mortgage broker place your economic interests ahead of his/her own economic interest. That broker will have been state-licensed and subject to licensing laws in addition to the general lending laws.

The Department of Real Estate has jurisdiction over mortgage loan brokers licensed as real estate brokers or salespersons, while the Department of Corporations has jurisdiction over mortgage loan brokers licensed as California finance lenders or residential mortgage lenders. To determine which agency will take your complaint, check the license status on the Department of Real Estate's web site at www.dre.ca.gov and click on "California Real Estate and Financial Services License Information".

WHO CAN I CONTACT IF I HAVE OTHER MORTGAGE-RELATED COMPLAINTS?

If you have a complaint regarding:

Appraisers - Bureau of Real Estate Appraisers

Escrow companies - Department of Corporations

Title insurance companies (including title insurance companies that perform escrow services - Department of Insurance

Statewide fraud and other statewide criminal matters - Office of the Attorney General

Local fraud and other criminal matters - Your local District Attorney's Office or City Attorney's Office

Unlawful discrimination in housing or lending practices - Department of Fair Employment and Housing

Unsolicited telephone marketing calls and faxes - Federal Communications Commission

Violations of (not interpretation of:

Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and Truth in Lending Act - Federal Trade Commission

Civil/Legal remedies - Private attorneys

If your complaint issue is not addressed in this booklet, please contact the Department of Real Estate and we can try to help direct you to the appropriate agency or resource.

HOW DO I AVOID MORTGAGE-RELATED PROBLEMS?

Many mortgage-related problems can be prevented by taking some precautions:

- Before you get your loan, do your own due diligence.
- Be aware of current scams by reading the Department of Real Estate's Consumer Alerts at www.dre.ca.gov/cons_alerts.html.
- Stay away from companies offering loan services for an upfront fee as these are often scams.
- Beware of "bait and switch" tactics.

- If you are getting a loan through a broker, make sure he/she is licensed.
- Read all of your documents and make sure you understand them before you sign them.
- To the best of your ability, pay your mortgage payments as scheduled.
- Make sure you are sending payments to the correct loan servicer. Remember that if the loan servicer changes, both your previous and new servicer must notify you of the change.
- If you have an impound/escrow account for payment of your property taxes and insurance, make sure those bills are actually getting paid.
- Check your servicing account from time to time to make sure that your payments are being applied correctly.
- Once you have paid off your loan, make certain that the lien is released.

GOVERNMENT AGENCY CONTACT INFORMATION

Federal Agencies

Federal Communications Commission (FCC)

Consumer and Governmental Affairs Bureau

Consumer Complaints

445 12th Street, SW

Washington, DC 20554

Phone: 1-888-CALL-FCC (225-5322)

Fax: 1-866-418-0232

Email: fccinfo@fcc.gov

Website: www.fcc.gov

Federal Trade Commission (FTC)

Headquarters/Financial Services Division

600 Pennsylvania Avenue NW

Washington, D.C. 20580
Phone: (877) FTC-HELP (382-4357)
Website: www.ftc.gov

National Credit Union Administration (NCUA)

NCUA Region V-Tempe
1230 W. Washington Street, Suite 301
Tempe, AZ 85281
Phone: (602) 302-6000
Fax: (602) 302-6024
Email: region5@ncua.gov
Website: www.ncua.gov

Office of the Comptroller of the Currency (OCC)

Consumer Assistance Group
1301 McKinney Street, Suite 3450
Houston, TX 77010
Phone: (800) 613-6743
Fax: (713) 336-4301
Website: www.occ.treas.gov

Office of Thrift Supervision (OTS)

1700 G Street, NW
Washington, DC 20552
Phone: 1-800-842-6929
Fax: (202) 906-7342
Website: www.ots.treas.gov

U.S. Department of Housing and Urban Development (HUD)*

451 7th Street SW, Suite 9146
Washington, DC 20410
Phone: (202) 708-1455

Consumer Financial Protection Bureau (CFPB)

Mortgage Payment Assistance or Consumer Complaints

Phone: (855) 411-2372

Website: www.consumerfinance.gov

State Agencies

California District Attorneys Association (CDA)

For a roster of California county district attorneys

Website: www.cdaa.org

Department of Corporations (DOC)

Consumer Service Office

1515 K Street, Suite 200

Sacramento, CA 95817

Phone: (866) ASK-CORP (866-275-2677)

Website: www.corp.ca.gov

Department of Fair Employment and Housing (DFEH)

Los Angeles Housing District Office

1055 West 7th Street, Suite 1400

Los Angeles, CA 90017

Phone: (213) 439-6703

Fax: (213) 439-6715

Oakland Housing District Office

1515 Clay Street, Suite 701

Oakland, CA 94612

Phone: (510) 622-2945

Fax: (510) 622-2956

Website: www.dfeh.ca.gov

Department of Financial Institutions (DFI)

1810 13th Street
Sacramento, CA 95811
Phone: (916) 322-0622
Fax: (916) 445-2123
Email: consumer@dfi.ca.gov
Website: www.dfi.ca.gov

Department of Insurance (CDI)

300 South Spring Street, South Tower
Los Angeles, CA 90013
Phone: (800) 927-4357
Website: www.insurance.ca.gov

California Department of Real Estate (DRE)

Mortgage Loan Activities
1651 Exposition Blvd.
Sacramento, CA 95815
Phone: (877) 373-4542
Fax: (916) 263-8943
Website: www.dre.ca.gov

Office of the Attorney General (AG)

Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
Phone: (916) 322-3360
Website: www.ag.ca.gov

Bureau of Real Estate Appraisers (BREA)

1102 Q Street, Suite 4100
Sacramento, CA 95811
Phone: (916) 552-9000
Website: www.brea.ca.gov

