



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

June 23, 2010

COMPANY NAME
ADDRESS
CITY, STATE ZIP CODE

Dear Sir or Madam:

As you may know, the New York State Attorney General's Office ("OAG") is conducting an ongoing investigation into the so-called "mortgage rescue" industry. To date, we have issued subpoenas to more than 20 mortgage loan modification companies, entered into settlement agreements, and pursued enforcement actions against several companies which have been unwilling to end their illegal and deceptive practices. It has been brought to OAG's attention that your company may be offering services to New York residents to help them avoid foreclosure or obtain a loan modification. Therefore, I want to share with you some preliminary findings of OAG's investigation and urge you to promptly review your company's practices to ensure that they do not violate applicable laws.

Our investigation has revealed widespread violations of New York Real Property Law § 265-b, which went into effect on September 1, 2008 and was amended effective December 15, 2009. Under this law, distressed property consultants, as defined by New York Real Property Law § 265-b(1)(e), must, among other things:

- Not charge or collect upfront fees for consulting services prior to the full completion of such services. Under the 2009 Amendment, this prohibition on upfront fees was extended to apply to licensed mortgage bankers, registered mortgage brokers and registered loan servicers.
- Enter into a written, fully executed contract with homeowners that fully discloses the exact nature of the service to be provided and the fee to be collected.
- Provide homeowners with contracts that are written in the language that the homeowner uses and was used in discussions with the homeowner to describe the consultant's services or to negotiate the contract.

- Allow homeowners to cancel the contract, without any penalty or obligation, within five business days after signing and provide the homeowner with notice of this right in the contract.

The law sets forth other requirements that you should carefully review. In OAG's investigation, it was uncovered that loan modification companies routinely fail to comply with the provisions of this law. Violators of the law may be subject to a civil penalty of up to \$10,000 for each violation of Section 265-b, and will be required to refund all fees improperly collected. You may review the text of the statute at my office's website, www.nyprotectyourhome.com.

OAG's investigation also has revealed instances where companies have developed various arrangements with attorneys in an apparent attempt to circumvent the requirements of Section 265-b, which exempts from the definition of distressed property consultant “an attorney admitted to practice in the state of New York **when the attorney is directly providing consulting services** to a homeowner **in the course of his or her regular legal practice.**” (Emphasis supplied.) Please note that this exemption **only** applies when attorneys are “directly” working on the client’s loan modification file as part of their “regular legal practice.” Merely having an attorney on staff does not exempt a company from the requirements of Section 265-b.

In addition to violations of Section 265-b, OAG's investigation has also identified companies that may be marketing their services with advertisements or claims that are deceptive or misleading to homeowners. Some of the problematic practices include:

- Unsubstantiated guarantees or representations regarding success rates, the likelihood of obtaining a loan modification, or the time it will take to obtain a loan modification.
- False 100% money-back guarantees.
- Fabricated consumer testimonials.
- Advertisements and solicitations designed to give consumers the false impression that a company is affiliated with the government or a government-sponsored program.

Such conduct violates New York State General Business Law §§ 349 and 350 and will subject violators to additional penalties and remedies.

The Attorney General is committed to aggressively enforcing the law against "mortgage rescue" companies that engage in illegal conduct and attempt to take unfair advantage of homeowners facing possible foreclosure. Recently, the New York Supreme Court issued a favorable decision in one case filed by this Office, finding that one of the largest foreclosure rescue companies and its president had violated Section 265-b as well as General Business Law §§ 349 and 350. Specifically, the Court found that the company violated Section 265-b by charging illegal, upfront fees for its loan modification services, failing to provide contracts in the language of its customers, especially Spanish, and failing to provide homeowners with the legally required notice of their right to cancel within five business days. The Court also ruled that the

company made numerous false claims in its advertisements, including misrepresenting the number of homes it had saved, falsely claiming to have a 90% to 100% success rate, falsely claiming to be “licensed” by a government agency, and falsely claiming that it was affiliated with “legal experts.” The decision holds the company's president personally liable for engaging in fraudulent and illegal acts, and permanently prohibits the respondents from engaging in the illegal, fraudulent and deceptive business practices and false advertising described in OAG's lawsuit.

I encourage you to review your company's practices and, where applicable, to cease and desist engaging in any unlawful, fraudulent, or deceptive practices. If you have any questions, please do not hesitate to contact our office at 212-416-8300 or 212-416-8250.

Very truly yours,

A handwritten signature in black ink, reading "Joy Feigenbaum". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Joy Feigenbaum
Bureau Chief
Bureau of Consumer Frauds &
Protection