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BEWARE OF LOAN MODIFICATION OFFERS FROM MORTGAGE CONSULTANTS

One thing that annoys attorneys the most is when non-attorneys attempt to peddle legal services to the general public. Once a crisis emerges in our community, the non-attorney (and sometimes out-of-state attorney) advertising comes out of the woodworks. The real estate crash is no exception. However, in a new twist, mortgage consultants and loan officers now peddle their services under the guise of their “legal department”.

Advertisements currently flood our community in the form of newspaper/website advertising, mass fliers/mailings and even representations made personally by your lenders. Among the most deceptive claims, is the comforting assertion from mortgage consultants that, “our legal department will negotiate,” your loan modification.

Sign me up!!! Not only will your mortgage consultant assist you in your loan modification, but also a whole department of attorneys will go to battle for you. Some of you are asking, “Where were these juggernaut legal departments when my family faced foreclosure?” I have tried to access this some of the loan modification companies’ websites, but many have been taken down. Why, might you ask?

This year, the Arizona Supreme Court ruled (R-08-0006) that lawyers who serve as in-house counsel for companies in Arizona must now register with the State Bar of Arizona. In-house counsel employed in Arizona as of January 1, 2009, are required to register within 180 days. Those employed after January 1, 2009, have 90 days to register. In plain English, this means that everyone in a “legal department” practicing law in Arizona (i.e. negotiating loan modifications) – regardless of where their office is located - must be licensed to practice law in Arizona. Makes sense, right? **An attorney/lawyer that targets Arizona residents, owning Arizona homes with those home loans recorded and enforced in Arizona, should be licensed to practice law in Arizona.**

Thanks to the Arizona Supreme Court, one problem has been addressed. However, there is another glaring problem with these claims. **Why would you pay a mortgage consultant an exorbitant fee, only to then hire the mortgage consultant's attorney?** The mortgage consultant's attorney has a pre-existing, continuous fiduciary duty to represent the interests of the mortgage consultant – even when those interests conflict with yours.

Moreover, if you seek a loan modification, it would seem reasonable to conclude that you want an attorney that is required by law to remain loyal to your interests. If you are considering a loan modification, here are the proper steps to take:

- 1) Consult with an attorney licensed to practice law in Arizona – Seems obvious, but I guarantee that you know people that have been targeted by out-of-state scams.
- 2) Use that consultation to receive an honest, straightforward opinion as to your realistic options: refinance, modification, short-sale, foreclosure or bankruptcy – Remember to hire an attorney that represents you, not your lender or even some random mortgage consultant!
- 3) Should you decide to hire the attorney, make certain that the attorney prepares a written fee agreement, detailing the services he/she will be perform for you, as well as, the fees and costs that will be charged – Services such as refinance and modification negotiations are often flat fees.
- 4) If you have been duped by a lender or mortgage consultant into a loan modification program, send them a written notice, terminating their services and demand your money back. If you do not receive a refund within two (2) weeks of your notice, then immediately contact the Arizona Attorney General's Office.
- 5) If your lender or mortgage consultant uses an "in-house legal department", call the State Bar of Arizona and give them the name of the department. If anyone in that legal department claims to practice/practices in Arizona, call the State Bar of Arizona; give them the attorney's name; and inform the Bar that said attorney

may be violating Arizona Rules of Professional Conduct E.R. 1.2 and 1.7.

As long as there are people seeking financial prosperity or encountering financial stress, the con-artists will readily take their money. In the past two (2) years, the firm has witnessed:

- 1) Realtors, appraisers and lenders colluding to over-value properties; extend high-risk loans; and reap inflated commissions, while families are left homeless and in financial ruin.
- 2) Fly-by-night realtors peddling short-sale services to distressed homeowners. If you are a realtor that did not hold a real estate license during the last housing crisis (early 1990's), please avoid representing clients on short-sales. You may be sued by that distressed homeowner, and the Arizona Department of Real Estate may suspend/terminate your license.

Here is hoping that #3 is not the lending industry gauging families for fees in exchange for unrealistic loan modifications. It is time that the days of robbing Arizona's families end.