

THE MORTGAGE SPECIALIST

Loan modification scams and how to avoid them



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Contributing Writer

So you've made the decision to try to modify your mortgage payments. Now what? Should you call an attorney? A real estate broker? A mortgage broker? A "certified" loan modification specialist? Or maybe

call the lender directly?

There are many variables so there's no easy answer but I would say to at least try to call the lender yourself. If you're going to Do-It-Yourself, here are some steps to get you started:

- » **1** Ask for the loan modification department. They may have other names for this department like loss mitigation, loan workout, client retention, etc. Just tell the customer service department that you want to apply for a loan modification.
- » **2** Request for a loan modification package. Most lenders will have a set of forms for you to fill out including a hardship letter and will also request to have your last 2 years of financial information. This would include paystubs, W2's, tax returns, bank statements of all accounts, and any other financial information that would document income and assets.
- » **3** After returning the full loan modification package with all supporting documents back to lender, follow up with them to make sure they have received your information. They are notorious for losing stuff. Then just follow their direction and instructions.
- » **4** Don't be surprised if each time you call in, you get a different response. Allow at least a few months for them to assess your file. Many lenders don't have a program in place yet so they may give you a temporary modification program for 3-6 months so they can work on the permanent program.
- » **5** If you get turned down, you can always try to re-submit for reconsideration.

For more information on loan modification assistance, you can visit: sfbayareashortsale.com for their Do-It-Yourself Loan Modification Guide.

If you are going to seek help from a loan modification company, there are a few important things to know. The state

of California requires that a loan modification company is either an attorney or a licensed real estate broker under the California Department of Real Estate (DRE).

When using an attorney, make sure that the attorney can demonstrate their experience in handling this process and that they are going to be actively working on your file. The state bar association has started to crack down on attorneys that are "renting" their name to unlicensed companies to do the work while the named attorney continues their other practice. The state bar association frowns on this type of relationship and is warning their members against it.

If you're considering a licensed real estate broker for loan modification assistance, then there are 2 sites you may visit that may help screen out some potentially bad companies and increase your chances of finding a good one that can really help.

The first site is where DRE has published a list of companies that they have issued Desist and Refrain orders: www.dre.ca.gov/cons_drs.asp. These persons and entities have been served with a Desist and Refrain Order and/or Accusation by the Department of Real Estate resulting from a loan modification and/or foreclosure rescue transaction. These companies are not allowed to engage in loan modification services.

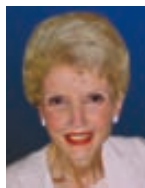
The other site www.dre.ca.gov/cons_adv_fees_list.asp has a list of individuals and/or companies that have submitted Advance Fee Agreements for Loan Modification and/or similar services to the Department of Real Estate for review and have received "no objection" letters regarding their use.

DRE has not endorsed these companies so the consumer should still research these companies thoroughly before retaining their services. However, if a real estate company is not on this list, they cannot accept any form of payment from a consumer until a loan modification is successfully completed or services are rendered." Justifying the entire or partial fee by calling it a processing fee, or the like, is prohibited.

For more tips and help on Short Sales, please visit sfbayareashortsale.com. Home Buyers Alliance offer consultations, document packaging, and lender negotiation services.

THE REAL DEAL

Short sales, they're complex, they take time



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So what is a short sale?

It is a sales transaction that does not have enough funds to cover all the costs, loans, and all other items like liens, delinquent property taxes or IRS payments just to name a few that will be due to complete the transaction.

What do you as a seller need to know if you are considering a short sale ?

- » **1** Be patient, short sales take time. You need to start by getting to the lender via the Department of Loss Mitigation and getting all the paperwork filled out and sent back to the lender including financial statements, income and expense reports, pay stubs, tax returns, submission of a payment modification plan, a hardship letter etc.
- » **2** There will certainly be a hit to your credit report so expect up to a 100 point decline in your FICO score
- » **3** You will need the advice of a CPA as there could be tax consequences to a short sale. The Federal government did pass a law in 2007 that helped to relieve from income taxes any forgiveness of debt by your lender on your short sale — the law forgives up to 1 million dollars if you are single and up to two million dollars if you are married but all the forgiven money has to have been used as purchase money for the property or for renovation

of the property. If any of the money on the loan was used for other purposes (to pay off debt, purchase a car, take cash out) that amount will be still be considered income to you and taxable. Also, in California there is no law to forgive the tax due on the forgiveness of the debt so there will be a state tax due. Thus, get that CPA advice so you won't have a problem with the IRS later on.

- » **4** You have keep making the mortgage payments or the lender will put you into default.
- » **5** Some lenders will forgive the debt but not approve the sale unless you sign a note for the amount they have forgiven which means that you agree to pay back what they are forgiving.
- » **6** The lender will want to know if you can raise the funds yourself—they will want to know if you can borrow from a 401K, what about a loan from family, can you sell other assets etc... so expect these questions.
- » **7** Your property will need to be listed on the multiple listing service as "subject to the approval of the lender" so that buyers will know it is a short sale.
- » **8** You will need to notify any other parties that have a lien or encumbrance against your property to get their approval to participate in the sale and they need to put in writing their willingness to cooperate with the sale even though they may not receive any payments for the amounts they are due.
- » **9** In addition to all the paperwork you will need to provide to the lender a "hardship letter" explaining why they should approve a short sale — for example job loss, a death etc. works but not having a

valid reason means the sale will probably be denied.

- » **10** If the lender approves the sale remember that they will not pay for any liens from the IRS, HOA dues in arrears, property taxes due, PMI insurance due etc... so you need to work with these entities to work out how to settle their claims.
 - » **11** Make sure that you get a letter from the lender made out to your title escrow company stating exactly what they will pay for and to what amounts, what they will not pay for, what commission will be paid to the agents representing you and the buyer and lastly, make sure that the letter has an expiration date and the signature of the person authorized to approve the sale.
 - » **12** Your real estate agent if you give them written permission can help you through the process but you need to be involved so that you have a good understanding of the process, meet all the timelines, and provide the correct information
- Assume short sales could take several months. Remember they are complex with many entities involved. The lender may deny the sale and still default and foreclosure on your property so get everything lined up and in order—contact the department of loss mitigation, get the paperwork, fill it out, make sure the lender gets it back, get advice from a CPA and meet the timelines. It just makes good sense to do it right as it improves your chance of success.

If you are behind on your mortgage or have difficulty making your mortgage payments, you need to find out now what options are available to you other than foreclosure.

This may include:

- Refinance up to 125% of your home value
- Loan Modification under special government programs
- Deed-in-lieu of Foreclosure
- Negotiate a forbearance agreement
- Discounted Note Purchase and Rent Back
- Short Sale
- Bankruptcy

Call today to schedule a free 30 minute consultation.
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