



Introduction

The current credit crisis has brought on the need for many Homeowners to seek assistance in making their mortgage payments more affordable in an effort to avoid foreclosure. The overall process is called Loss Mitigation, which offers several different options to choose from (depending on each individual situation). The most common solution being pursued is called a Loan Modification. When this option is presented, the Lender who holds the mortgage agrees to change the terms of the loan in an effort to make the payments more affordable for the Homeowner. There are several other options of Loss Mitigation, including Short Sales (explained in detail later in this report), Deed-in-Lieu of Foreclosure, Forbearance Agreements, and others. This report will focus primarily on Loan Modifications, since they are clearly the most popular option being offered across the country.

Due to the fact that so many Homeowners have experienced financial hardships in the past 2 years (i.e. decrease of income, increase in expenses, loss of home equity, loss of value in investment portfolios, etc.); Loan Modifications have become the most sought after solution, especially since it has become so difficult to qualify for a mortgage refinance. The result of this growing trend is the emergence of many “fly by night” Loan Modification companies. Several of these companies are operating out of compliance, charging up-front fees from distressed Homeowners without providing a benefit, and/or taking advantage of trusting Homeowners during the most vulnerable time of their lives. Local State and Federal Government Agencies are working hard to discipline these predatory companies, but unfortunately they have limited resources to punish these offenders in a timely manner.

There are essentially 4 options to consider when pursuing a Loss Mitigation endeavor.

1. **Third Party Company**: these companies are typically staffed by former Loan Officers and Loan Processors and focus primarily on Loan Modifications. When working with one of these companies, you will want to make sure they have an Advanced Fee Agreement with the Department of Real Estate (mentioned later in this report). In addition, be wary of claims by these companies that they have an attorney on staff or an in-house attorney. If the attorney is employed by the company and serves as “in-house counsel” that attorneys duties to, obligations and responsibilities legally lie with the company and not with you the client. Regardless of what the company tells you, you are not hiring that attorney to work for you. The attorney works for the company, not you.
2. **Attorneys**: Several Attorneys across the country are devoting their practices to Loss Mitigation. There are varying degrees of participation by Attorney-based Loss Mitigation Firms. You are encouraged to ask whether these Attorneys will be working directly on your case, or whether the company will outsource your file to Paralegals. Whenever possible, consider working with a Real Estate Attorney with a Law Center devoted to Loss Mitigation. To ensure that the attorney you hire is working on your behalf and has a fiduciary and legal responsibility to you and no one else, make sure that any contract you sign and payment you make is made directly with the attorney or law firm and not with a third party company.
3. **Do It Yourself**: The process of Loss Mitigation can be performed by the actual Homeowner, although it is difficult, and often frustrating to do. Some of the most challenging aspects of “doing it yourself” include long on-hold times for each phone call, speaking to a different person at the Lender each time you call (who may or may not know what the previous person spoke to you about), thick bureaucratic “red tape” to cut through by Lenders who are resistant to help, and the overall fact that the Homeowner really doesn’t know how to properly advocate for themselves (which often leads to an inferior offer compared to what the Homeowner would have received had they been better represented). When discussing the “do it yourself” method of Loss Mitigation, comparisons are often made of “defending yourself in the court of law without an attorney” or “advocating for yourself in an IRS audit without your CPA”. If you would like to pursue this option, please contact the National Mortgage Network Volunteer who provided this report to you. There are “Do It Yourself” Booklets that can be purchased that might help.
4. **Do Nothing At All**: Remember, when you signed your Loan Documents, you agreed to a contract to “pay the Lender as agreed” while putting up your home as collateral. If you are unable to afford your mortgage payments and simply decide not pay them, you can

expect the Lender to pursue Foreclosure proceedings, which will ultimately force you to leave the home. It is important to look ahead at the inevitable expenses and consequences of “doing nothing” which include devastating effects on your credit rating that will prevent you from buying another home for many years, as well as costs for renting a new home (first and last month’s rent will typically need to be deposited at the very least), utility company deposits (gas & electric, cable, phone, etc.), possible moving expenses (to get your valuables and furniture moved to the new home), and more.

The purpose of this bulletin is to provide a public service to the many people who are considering a Loan Modification, Short Sale, or other options to avoid a possible foreclosure on their home. It is highly recommended that you read this information carefully, and consider forwarding it to people you care about who might be considering one of these options. We feel that knowledge is power...especially when making a decision about the largest financial debt you have. For more information, please contact the Volunteer who provided you this information, or contact the National Mortgage Network directly (the contact information is contained at the end of this report).

Questions to ask your Loan Modification or Short Sale Company

1. Is your company a Law Firm?

- After several discussions with various companies, we at the National Mortgage Network feel that an actual Law Firm is the preferred type of Loss Mitigation company that a consumer should be dealing with, unless you plan on performing this task yourself. We actually do not even endorse or recommend companies that outsource your file to an Attorney (or say that they have an Attorney on staff). Our opinion is that this platform is similar to using an accounting service that outsources your tax planning to a CPA. You will typically find more accountability and urgency when dealing with an actual attorney or Law Firm who is working on your case.

2. If your company is a Law Firm, will I have access to speak to an Attorney at all during the process?

- If you pay any Law Firm or company that says they have an Attorney on staff, you should be able to speak with the Attorney in the very beginning, or at any point in your transaction if you have concerns or questions. Remember, however, if you hire a company that has an attorney on staff you are not hiring that attorney to work for you.

- 3. If you are not a Law Firm, do you have an Advanced Fee Agreement approved by the Department of Real Estate (DRE)?**
 - We do not recommend working with Loan Originators or Loan Originating Companies (Brokers) when pursuing any type of Loss Mitigation endeavor. They typically do not have any experience and do not understand the legal leverage necessary to modify a binding contract that you (as the Borrower) had originally agreed to.
- 4. If you are not a Law Firm and do not have an Advanced Fee Agreement approved by the DRE, how exactly can you legally take up-front fees from me?**
 - Most third party companies are not in compliance with Federal and/or State laws, and should not be asking for any money from you up front. From our research, the DRE Advanced Fee Agreements that have been approved indicate the requirement of a 100% money back guarantee if any advanced fees are taken.
- 5. How long have you been in the Loss Mitigation business?**
 - Since Loss Mitigation and Loan Modifications are a fairly new practice to this market, we feel that Law Firms or Attorneys are the most competent, moral, and ethical entities to be able to adapt to this method effectively. Furthermore, due to their lawful responsibility, Attorney's have taken an oath to protect their clients best interest at all times. There is more accountability, experience, and expertise typically found with this option.
- 6. Do you only help Homeowners with Loan Modifications?**
 - There are no guarantees that a Lender will offer you a Loan Modification. There are however, other options that exist which might be helpful to your situation. Such options include Short Sales, Deed-in-Lieu of Foreclosure, Forbearance Agreements, and a possible FHA write-down refinance that many Lenders may agree to. It is important to know the facts, and make sure that whoever you are doing business with understands that Loan Modifications are not always an option. Steer clear of anyone who guarantees a Loan Modification!
- 7. Does your company offer legal services that may help me with leverage with my Bank, Lender, or Mortgage Servicer?**
 - A common option is a Forensic Loan Documentation Audit which may help determine if there were any violations or misrepresentations of pertinent information in the original contract that could be used as leverage with your Lender(s).

8. What is your screening process before accepting my payment?

- As previously mentioned, not every Homeowner will qualify for a Loan Modification. Some companies take money from every person they speak with, instead of analyzing the Client's financial situation prior to accepting their file. It is our opinion that this business practice is an unacceptable and careless way to perform these services.

9. Are my fees refundable? If so, what portion of my fees are refundable?

- As stated above, third party companies should have a 100% money back guarantee. Law Firms and Attorneys typically assess a flat fee pricing option for Loss Mitigation and Loan Modification services rather than incorporate expensive hourly rates. We have determined that many of these firms will refund part, if not most of your payment if the services cannot be performed.

10. What is your strategic plan to deal with the Lender(s) once my package has been submitted?

- It is recommended that you specifically ask these companies what they do, and what their strategy is for obtaining a Loan Modification. Submitting a hardship package and waiting for the Lender to respond is not a sufficient game plan. Many consumers who attempt a Loan Modification on their own pursue this type of strategy, and often end up disappointed.

11. How often will you update me on the process of my application?

- We highly recommend working with companies who communicate to their clients at least once per week with an update.

12. How long will it take to receive an offer or resolution from the Lender(s)?

- The closer you are to foreclosure, the higher priority you are with the Loss Mitigation Department. If you are currently not in default or not behind on your payments, the process will take longer. Be very leery of anyone who guarantees a quick turnaround time regardless of your situation. Throughout the interviews that we have conducted with experienced Loss Mitigation Specialists, we have repeatedly been told that properties with Notice of Defaults (NOD) already issued will get first priority with the Banks and Lenders since there is a Sale Date pending (due to the timelines and deadline of foreclosure proceedings for these specific properties).

Red Flags

1. **Were you guaranteed an outcome by the person you spoke with?**
For example: Lowering your principal loan balance, reducing your interest rate & monthly payments.
 - When you originally signed your loan documents, you contractually agreed to the terms of the loan. How exactly can someone guarantee that they have the power to nullify an enforceable contract? When you hear these types of guarantees or assurances, consider this a red flag that you are being SOLD, not ASSISTED!
2. **Were you advised to stop making your mortgage payments by someone who was NOT an Attorney?**
 - Many people at this point have already missed payments on some of their debts in an effort to prioritize which payments they could afford on any given month. There are obviously consequences to credit ratings and credit scores when payments are not made on time. Following the advice of someone to purposely avoid making mortgage payments is not advised typically, especially if they are not an Attorney. Remember, it is an unlawful practice to provide legal advice if you are not an Attorney (similar to someone providing tax advice if they are not a tax professional).
3. **How did you hear about this Company? Are you carelessly responding to a clever marketing campaign (such as Direct Mail, Television/Radio Commercials/Infomercials, Website Banners/Pop-Ups)?**
 - The majority of the homeowners across the country who are at risk of foreclosure obtained these troubled loans by doing business with companies they did not research (just because they had an intriguing marketing campaign). Now that your loan has become unaffordable, do you want to risk making the same mistake again...to the same people? Our research has shown that many of the companies who are advertising in this manner were the same ones who previously arranged these toxic loans! Our advice is simple...be very careful who you do business with!
4. **Were you advised as to the tax implications of a potential loan modification or short sale? Were you advised as to the deficiency implications of a loan modification or short sale?**
 - Topics like these are extremely important to know BEFORE you agree to any Loss Mitigation options. If this information is not offered to you, be sure to ask!
5. **Additional Red Flags:**
 - a. You are instructed not to contact your attorney or tax advisor

- b. The company only accepts payment by Cashier's Check or Wire Transfer.
 - Most Law Firms will accept payment by credit card or personal check. Be cautious of third party companies who do not accept this type of payment. They are typically trying to avoid the cancellation protection that you have from your Banks that offer you this credit.
- c. The company instructs you to make your full mortgage payments directly to them (instead of paying your Lender), or partial payments to both them and your Lender.
- d. The company instructs you to transfer the title (Deed of Trust) of your home to them (which would transfer the ownership of your property from you to the company)
- e. The company pressures you to sign paperwork you don't understand

Short Sales

Many Homeowners are unable to afford their current mortgage payments, and owe more on the balance of their mortgage loans than the present market value of their homes:

<p><u>Example:</u> Property Value: \$300,000 1st Mortgage Balance: \$350,000 2nd Mortgage Balance: \$20,000 (this Homeowner is "upside down" by \$70,000)</p>

When Lenders agree to a Short Sale, it means that they will accept less than the total amount due as part of an agreement to sell the property at current market value. In the above example, the Lender would agree to allow the Homeowner to sell the property "short" of the balance owed (\$70,000 in this case).

For many Homeowners, a Short Sale is an excellent solution to allow them to move to a more affordable living arrangement without the need to "come out of pocket" with the difference between the current market value of the home, and the money owed against the property (\$70,000 in this example).

Many Homeowners make the mistake of **finding a Buyer** for their home first, then **asking their Lender permission** to forgive the extra debt afterwards. What typically happens is the Lender will take several months to approve the Short Sale. During this time, the Buyer of that home gets tired of waiting, and decides to purchase a different

home. This method can be frustrating, costly, and increase the stresses of the Homeowner unnecessarily.

The most logical path a Homeowner should take is to speak with a Real Estate Attorney, who will help **pre-negotiate the Short Sale** first, and then **allow the Homeowner to sell the property** afterwards. A property with a pre-negotiated Short Sale is typically much easier to sell, and will allow the Homeowner and Real Estate Agent to save time (and headaches) in the process.

Please note that tax implications and credit reporting issues might exist when this option is pursued. It is always advisable to speak with your Tax Advisor to determine any tax ramifications prior to pursuing any option.

Foreclosure Scams to Avoid

Phony Counseling or Phantom Help

The Scam Artist tells you that he/she can negotiate a deal with your Lender to save your house ONLY if you pay him/her a fee first. You may be instructed NOT to contact your Lender, Attorney, or Credit Counselor because the Scam Artist insists he/she will handle all of the details. Once you pay the fee, the Scam Artist takes off with your money and is unable to be reached again.

Title Surrender

The Scam Artist tricks you into thinking you are signing documents for a new loan to make your existing mortgage current. In actuality, you are signing over the title of your home to the Scam Artist who now legally holds title to the home (and has your notarized signature to legally claim ownership in the property)!

Equity Skimming

The Scam Artist offers to find a Buyer for your home, but only if you sign over the deed and move out. The Scam Artist promises to pay you a portion of the profit once the home sells. However, once you have transferred the deed, the Scam Artist decides to rent out the property, while keeping the collected rent (meanwhile your Lender proceeds with foreclosure proceedings against you). When the smoke clears, you lose your home, and you're still responsible for the unpaid mortgage. Remember, transferring the deed (ownership of the home) does nothing to transfer your mortgage obligation (the debt against the home)!

Other Scams

It would be nearly impossible to list every version that Scam Artists use when preying on vulnerable Homeowners. Remember, if an offer sounds too good to be true, it probably is. Always consider consulting with a Real Estate Attorney for matters that involve your troubled Mortgage, and beware of “fly by night” companies who employ clever, smooth-talking salespeople who simply tell you what you want to hear. You should also be wary of “private investors” who approach you with offers to help you avoid foreclosure. Although some of these people are legitimate, many of them are not!

Who to Contact to Report Scams or Fraud:

- Your State Attorney General
- The Department of Real Estate
- The Federal Trade Commission
- Your Local Better Business Bureau
- Your Local Media
- Public Assistance Groups (Government and non-Government)
- Non-Profit Organizations

(Specific phone numbers and websites will vary depending on where you live)

Acknowledgements

The National Mortgage Network would like to thank Spencer Lugash, Real Estate Attorney At Law for dedicating his time to provide much of the information contained in this report. The Lugash Law Center specializes in negotiating with Lenders on behalf of distressed Homeowners who need assistance with their mortgage and real estate needs. Among the services provided are Loan Modifications, Short-Sale negotiations, Forensic Loan Document Audits, Deeds-in-Lieu of Foreclosure, Forbearance Agreements, Repayment Plans, and other options of Loss Mitigation, and Foreclosure Prevention. For more information about Spencer Lugash, or the Lugash Law Center, please visit www.LugashLawCenter.com or call (800) 858-6492.

LUGASH LAW CENTER

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The **National Mortgage Network** is a Non-Profit Organization made up of mortgage professionals that volunteer their time to advise and help educate the consumer about current mortgage market conditions. We provide free information and maintain a public use website and with news and information kits about the real estate market and its current conditions. **The National Mortgage Network is not a Lender, Law Firm, or a Loss Mitigation Company.** For more information about the National Mortgage Network, please visit www.NationalMortgageNetwork.org or call **(800) 349-2119**.

