

Beware of Loan Modification

Loan modification specialists, known as “distressed property consultants” in New York law, are for-profit individuals and companies who offer to help homeowners who are in default or foreclosure for a fee. The fees can be very large — \$2,500, \$5,000, or even more — and many of these are scam artists who never deliver on their promises and just take the homeowner’s money.

In 2008, New York passed a very strong law regulating distressed property consultants. It is important to know your rights under this law (NYS Banking Law section 265-b).

What “consulting services” are covered under the law?

“Consulting services” means services provided by a distressed property consultant to a homeowner that the consultant claims will help to achieve any of the following:

1. Stop, enjoin, delay, void, set aside, annul, stay or postpone a foreclosure filing, a foreclosure sale, or the loss of a home for nonpayment of taxes;
2. Obtain forbearance from any servicer, beneficiary or mortgagee or relief

with respect to the potential loss of the home for nonpayment of taxes;

3. Assist the homeowner to exercise a right of reinstatement or similar right provided in the mortgage documents or any law or to refinance a distressed home loan;
4. Obtain any extension of the period within which the homeowner may reinstate or otherwise restore his or her rights with respect to the property;
5. Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a property in foreclosure;
6. Assist the homeowner to obtain a loan or advance of funds;
7. Assist the homeowner in answering or responding to a summons and complaint, or otherwise providing information regarding the foreclosure complaint and process;
8. Avoid or ameliorate the impairment of the homeowner’s credit resulting from the commencement of a foreclosure proceeding or tax sale; or
9. Save the homeowner’s property from foreclosure or loss for nonpayment of taxes.

What To Do If You Think You’ve Been Scammed

Visit www.loanscamalert.org for details on how to spot a scammer and see a list of trusted resources.

To report a suspected loan scammer, you can:

- ▶ Go to www.loanscamalert.org
- ▶ Call the Federal Trade Commission (FTC) at 877-FTC-HELP (1-877-382-4357) or
- ▶ Contact the New York attorney general’s office by email at NYSHOMES@ag.ny.gov or phone at 1-800-771-7755

What does the law prohibit?

- ▶ Distressed property consultants are prohibited from taking any upfront payment, before the full completion of all services promised.
- ▶ Consultants may not provide services unless there is a written agreement, or contract, with the homeowner. Consultants may not take power of attorney for a homeowner.
- ▶ Consultants may not keep original documents that belong to the homeowner.

A Written Contract is Required

Before providing services, the homeowner must sign a written contract with the consultant. The contract must state exactly what services are to be provided to the homeowner, the total amount and terms of payment expected, the name and business address of the consultant, and a disclosure letting the homeowner know they should consider consulting with a nonprofit housing counselor in New York. (This disclosure is spelled out in the law.) The agreement must be signed and notarized.

The homeowner has 5 business days to rescind (cancel) the contract. A notice of right to cancel must be given to the homeowner along with a copy of the contract.

v1.0, 09-12