



**RICHARD CORDRAY**  
OHIO ATTORNEY GENERAL

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By Electronic Mail

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, N.W.  
Room H-135 (Annex W)  
Washington, DC 20580

Re: Mortgage Assistance Relief Services Rulemaking, Rule No. R911003

Dear Commissioners:

I am writing in response to the Commission's request for comments on whether the Commission should issue a rule regulating Mortgage Assistance Relief Services, or as we commonly call them in Ohio: Foreclosure Rescue Scams. I strongly support the Commission's efforts to regulate these companies.

Ohio has been hit hard by the foreclosure crisis, with over 83,000 foreclosure filings in 2007 and almost 86,000 in 2008. Borrowers who are facing foreclosure are already in dire circumstances, and are often desperate for help. Scam artists view these borrowers as easy targets, and promise to help the borrower escape foreclosure in exchange for what little is left of the borrower's savings. The scam artists then either do nothing, or make only minimal effort to help the borrower avoid foreclosure. Sadly, the same services these companies pretend to offer are available for free from many non-profit and government agencies.

My office has received over 400 complaints about foreclosure rescue companies since 2007, and in response has filed lawsuits against 14 companies and reached settlements with several others. These actions have stopped these particular companies, but many scammers still remain. A national rule regulating foreclosure rescue companies would go a long way towards protecting the most vulnerable consumers.

I offer detailed comments on the Commission's questions below, but please feel free to contact me if I or my office can be of help in any way.

Sincerely,

Richard Cordray  
Attorney General of Ohio

## **Ohio Attorney General Richard Cordray's Comments on Mortgage Assistance Relief Services Rulemaking, Rule No. R911003**

### **1. The Loan Modification and Foreclosure Rescue Industry**

Our office offers the following overview of the foreclosure rescue industry:

Empirical Data and Industry Success Rates: There is little reliable data about the foreclosure rescue industry. Our office is not aware of any industry-wide clearinghouse for information related to the foreclosure rescue industry, and this lack of information is one of the primary reasons a national regulatory and enforcement effort is needed against rescue companies. At most our office has only anecdotal information we have received from consumer complaints and subpoenas to individual companies. This anecdotal evidence suggests, however, that a substantial majority of consumers who have signed up for foreclosure assistance did not receive meaningful help. The rescue company either did nothing, or obtained relief that was of minimal help to the consumer, such as a brief repayment plan.

Types of Foreclosure Rescue Services: The quality of foreclosure rescue services varies widely. Unfortunately, many companies and individuals are outright scam artists, who take consumers' money without any intention of actually doing anything. The actions of these companies are already largely illegal, and often constitute criminal theft.

For those companies that actually do put some effort into helping the consumer, the most common business model is an offer to negotiate a loan modification or repayment plan with the consumer's servicer. The rescue company usually charges the consumer an upfront fee between one and two thousand dollars. Often, however, the company will make only a minimal effort to contact the consumer's servicer. Most of our office's comments relate to this type of foreclosure rescue company.

In addition, some companies offer several variations of a rescue service where the consumer transfers his or her deed to the rescue company and then either rents or buys the property back. Our office supports a rule to regulate these types of companies, but we have seen relatively few scams of this nature in Ohio, so our comments focus primarily on the loan modification type of rescue company.

Role of Mortgage Servicers: Our office has not seen mortgage servicers play a major role in the foreclosure rescue industry. Servicers tell us that they legally have to work with any representative a consumer chooses, and often do not know if a consumer's representative is a for-profit rescue company. Servicers have, however, cooperated with our office and other state Attorneys General in identifying possible victims of rescue scams. The Commission should encourage servicers to continue these efforts. Further, although we have not seen mortgage servicers playing a major role in the foreclosure rescue industry, our office has received complaints from consumers with respect to the lack of response and sometimes no response from their servicers. This often places vulnerable homeowners in a position where they are easy targets for rescue scams.

## **2. Need for FTC Rule**

Even though several states have passed laws regulating rescue scams, our office believes that a national rule targeting rescue companies is needed. The national nature of the foreclosure rescue industry creates a need for a national rule. Foreclosure rescue companies are based in many different states and target and accept customers from across state lines. For example, our office has received complaints about 118 foreclosure rescue companies based in 20 different states. Although any company that does business in Ohio is ultimately subject to Ohio law, the scattered nature of these companies often makes it difficult to force them to comply. In addition, even when our office succeeds in stopping an out-of-state company from doing business, we often see the same scammer reappear shortly thereafter with a new address and a new name. A national rule and national enforcement effort would help force the industry to comply with the law.

The Commission should make clear, however, that it is only setting a strong minimum standard with its rule and is not preempting individual state laws. A national law is necessary because of the national scope of the foreclosure rescue industry, but individual states may have additional local needs or problems that necessitate individual state laws.

## **3. Scope of Covered Practices**

Our office offers the following recommendations on what specific provisions a rule regulating foreclosure rescue companies should contain:

Registration and Licensing: First, and most importantly, the Commission should require that all foreclosure rescue companies register and be licensed. Our office's experience with rescue companies indicates that most companies providing these services are fly-by-night companies operated by individuals with little training in the foreclosure process. Their intent is to take as much money as possible from a consumer and then disappear. A registration system will allow legitimate rescue companies to operate above the table, while allowing for easy enforcement against those that refuse to register.

Ideally, the registration system would be run by the Commission, but in the alternative, the Commission could help states coordinate and share information about companies registered under their own systems. As for particular requirements for a company to register, our office recommends that the Commission require that companies provide a particular address and phone number for government and consumer inquiries, report results on individual consumers, post a bond that would be available to consumers for recovery, and file an annual audit of their company. Our office already imposes several of these requirements for companies providing rescue services in Ohio. Ohio Rev. Code § 4710.01 et seq. Importantly, the rule should require that the owners and individual operators of the company also register, as our office often sees the same individual open a new company after their first company has been shut down.

Prohibition on Upfront Fees: The Commission should impose a prohibition or at a minimum a cap on upfront fees charged by foreclosure rescue companies. Ohio law currently imposes an initial consultation fee cap of seventy-five dollars for companies engaging in debt adjusting, including foreclosure rescue services. Ohio Rev. Code § 4710.02. A prohibition or low cap on upfront fees is of primary importance in regulating foreclosure rescue services. The most

common complaint to our office is that a rescue company will take thousands of dollars from the consumer upfront, do nothing, and then refuse to talk with the consumer. Our office sees no reason that a legitimate foreclosure rescue company would not be able to make a profit by only charging a consumer after satisfactory results have been obtained. A prohibition or cap on upfront fees would only hurt those companies that have no intention of actually seeking results for their customers, and would force out the illegitimate companies in the business.

Prohibition on Names Disguised As Government Agencies: The Commission should declare unfair or deceptive any attempts by a foreclosure rescue company to disguise itself as a government agency. Our office has seen many companies that have names or advertisements that make it sound like they are government sponsored. For example, our office recently sued a company called Foreclosure Home Assistance, LLC, that markets itself as “F.H.A.” A consumer complained to our office that she had signed up with Foreclosure Home Assistance because she thought they were the Federal Housing Administration. These practices deceive consumers and undermine legitimate government efforts to offer foreclosure assistance.

Disclosure of Other Available Options: The Commission should require that foreclosure rescue companies state on all their advertising material that consumers can deal with their servicer directly and that government and non-profit agencies offer the same services for free. Rescue companies hold out that they offer special assistance that consumers cannot receive anywhere else. Consumers should be made aware that they can deal directly with their servicer or work with free government or non-profit help before they hand over their little remaining savings for these illusory services.

Requirement of Written Contract and Right to Cancel: The Commission should require that foreclosure rescue companies enter into plain language written contracts with the consumer in the consumer’s primary language. The written contracts should clearly and conspicuously disclose the services to be delivered, the timing for delivery of services, and the fees to be charged. Written contracts give the consumer specific knowledge of the duties that the company is to perform and gives the consumer solid evidence against the company if it fails to perform these duties. In addition, all contracts should be required to clearly and conspicuously disclose and contain a right to cancel, as this gives the consumer a way out if the rescue company is not fulfilling its promises. Failing to give consumers a right to cancel could trap them with a dishonest or incompetent company, and lead them closer to foreclosure.

Prohibition of “Do Not Contact Your Servicer” Clauses: The Commission should prohibit foreclosure rescue companies from prohibiting consumers from contacting or making payments to their servicer. Our office has seen many foreclosure rescue contracts that prohibit the consumer from directly contacting their servicer, and cancel the contract without a refund if the consumer does so. Further, we have successfully litigated this issue and received an Order that these actions are unconscionable practices in violation of Ohio law. Ohio Rev. Code § 1345.01 et seq. These onerous terms shield rescue companies from oversight, and often lead the consumer closer to foreclosure. Our office has heard from many consumers who thought the rescue company had resolved their situation, and then received a phone call from their servicer telling them that they have not received a payment in months.

Deed Transfer Protections: Ohio does not currently have a law regulating rescue companies that take ownership of a consumer’s deed, but our office recommends that the Commission adopt

such a rule. Several states, such as Minnesota and Illinois, have passed laws regulating these types of companies that could be used as guidelines. 765 Ill. Comp. Stat. 940/50(b); Minn. Stat. § 325N.17. For example, Minnesota requires that a rescue company verify that the consumer has sufficient income to repurchase the deed before taking possession of it, and requires that any such transaction have a 3 day cancellation notice.

#### **4. Scope of Covered Entities**

Our office offers the following recommendations on what specific entities should be covered by a rule:

**Banks, Thrifts, and Credit Unions:** Our office has not to date seen banks, thrifts, or credit unions engage in foreclosure rescue services, other than for loans they service. Because of this, a rule regulating foreclosure rescue companies would have little competitive impact on banks, thrifts, or credit unions.

**Non-Profit Agencies:** In Ohio a number of non-profit agencies do offer foreclosure avoidance assistance. So long as these agencies are properly trained and regulated, such as through HUD certification and approval, our office believes these agencies provide a very beneficial service to Ohio consumers. Most non-profits offer their services for free to low-income consumers, and often obtain successful results. For example, Ohio's Save the Dream program, the state's multi-agency foreclosure prevention effort, operates a hotline that is staffed by our office and refers distressed borrowers to HUD approved housing counselors. Since April 2008, Save the Dream has referred almost 13,000 consumers to housing counselors. The Commission should make sure that any rule does not prevent legitimate non-profit agencies from offering foreclosure avoidance assistance.

**Attorneys:** Our office recommends that attorneys should be exempted from the rule, but only if they have a legitimate attorney-client relationship with the consumer. The knowledge an attorney has of his or her state's foreclosure laws can properly help borrowers navigate the foreclosure process. In addition, attorneys are already extensively regulated by their state Supreme Court or bar association. Our office, however, often sees attorneys offer foreclosure rescue services without actually establishing an attorney-client relationship. First, out-of-state attorneys solicit Ohio consumers without mentioning that they are not licensed to provide legal advice in Ohio. Second, our office sees foreclosure rescue companies advertise that they will provide a lawyer or legal help to a consumer. The lawyer's client, however, is actually the company, not the consumer, and at most the lawyer will file a brief template response on behalf of the consumer. For example, our office successfully sued Foreclosure Solutions, LLC, a foreclosure rescue company that contracted with attorneys who only filed minimal form documents on behalf of consumers. The Supreme Court of Ohio also disciplined the attorneys involved with Foreclosure Solutions. *Cincinnati Bar Association v. Mullaney, et al.*, 119 Ohio St. 3d. 412 (2008). In these cases the attorney is not providing legal advice or acting as an attorney, and should be subject to any rule promulgated by the Commission.