The Rogers Law Group, LLC

FEDERAL TRADE COMMISSION
Division of Financial Practices
600 Pennsylvania Ave, N.W.
Washington, DC 20580

March 14, 2010

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

To Whom It May Concern:

Thank you for the opportunity to comment on your proposed rules. Unfortunately, I must acknowledge and accept the need for more regulation in the loan modification area. There appear to be many incompetent and dishonest firms taking advantage of distressed homeowners. I believe few attorneys have started these firms, but many have been recruited by those firms so that the firms could "hide" behind the attorneys' law license. Whether initiating or joining these firms, the unfortunate fact remains that many attorneys are a part of the substandard and sometimes deceitful loan modification practices.

Although I found your rules proposal and the accompanying comments to be thorough, there did appear to be one glaring omission in your loan modification picture... the grossly inadequate performance of lenders and servicers giving rise to the demand for third party loan modification companies. As I acknowledge the need to further regulate loan modification companies, I hope you'll acknowledge the need to preserve the availability of affordable, competent legal assistance to put distressed homeowners on an equal footing with the lenders and servicers who appear to be more intent on denying, rather than approving, foreclosure avoidance assistance.

It would not surprise me to learn that the permanent loan modification approval rate for those applicants not using an advocate is less than 1%. I would appreciate knowing what that approval rate is. Before adopting rules to effectively eliminate legal advocates, I hope the FTC will know precisely what that number is, and therefore the impact of your proposed rule on distressed homeowners.

Following is a lengthy commentary on your proposed rules. It consists of three main themes:

1. Lenders and Servicers are presiding over an undeniably horrendous loan modification process. A lengthy discussion of this area is presented, as it is a cornerstone overlooked in the FTC rules discussion.

2. The proposed rules will put most loan modification attorneys out of business, and prevent other attorneys from entering, thereby drastically reducing homeowner chances of ever obtaining a loan modification.

3. The FTC need not outlaw every attorney who assists distressed homeowners in order to stop those people who prey on such homeowners. The net effect of the proposed rules would be the unnecessary loss of more homes to foreclosure, which would further exacerbate an already desperate situation.

Foreclosure is a matter more serious than dollars and cents and credit scores. Families are being thrown out of their homes with nowhere else to live. Violent crimes and suicides are not rare results. Families are being torn apart and people are dying as a direct result of the foreclosure crisis. It is therefore urgent that the FTC give appropriate consideration to proposed actions.

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The permanent loan modification success rate of banks appears to be less than 10%. The FTC should not outlaw the only reasonable opportunities left to the millions who want to keep their homes, and who qualify to do so.

My Law Firm consists of three attorneys; each with over 20 years of real estate experience. The primary practice area of this Firm is Loan Modification and Foreclosure Defense. I have worked every calendar day for more than a year to help desperate homeowners keep their home. Our success rate for loan modifications on first mortgages on primary residences exceeds 90%. To be precise, that statistic includes Trial Modifications. However, we have never failed to convert a Trial Modification to a Permanent Modification. Prior to clients engaging my services, all or almost all of them were formally denied a loan modification or otherwise led to believe they would never receive one. It is a rare case when we lose a family's primary residence. On the other end of the scale, I suspect it is a rare case when a bank grants a permanent loan modification to any borrower not using an attorney or other advocate. The proposed rules would relegate the fortunes of distressed homeowners to the proven dismal record of Lenders and Servicers.

It is debatable whether the proposed rules would decrease or increase predatory loan modification practices. It is certain they would decrease the number of law abiding legal advocates for desperate homeowners, and by so doing would create a shortage. The resulting demand might well be filled by less desirable advocates.

My sincere thanks for the advance opportunity to comment on your proposed rules.

Respectfully,

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Attorney at Law

Encl: An Urgent Fee to the FTC: Please Don't Do This to American Homeowners
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An Urgent Plea to the FTC: Please don't do this to American Homeowners

Mortgage Assistance Relief Services Rulemaking Input - Rule No. R911003 by Rick Rogers, JD/MBA

An Urgent Plea to the FTC…

Please don't do this to American Homeowners

The proposed FTC rules, as they stand, will result in the wholesale elimination of reputable and capable attorneys who help desperate homeowners. The inept and dishonest firms you seek to eliminate may flourish in the disappearance of the honest, capable competition. All desperate homeowners will find the cost of capable assistance has skyrocketed. The self-employed, the salespeople, those on unemployment and temporary disability will find loan modification assistance prohibitively expensive or entirely unavailable, as the attorney must risk performing the difficult and time-consuming service for this group for no fee at all. The proposed rules will put desperate homeowners, with nowhere else to turn, at the mercy of the lenders and servicers and investors, hereinafter referred to collectively as banks, which will continue their present practice of delaying, discouraging, and denying loan modifications. Without the troublesome interference of capable attorneys, banks will breathe a collective sigh of relief, as we watch their already dismal performance on permanent loan modifications further deteriorate.

The foreclosure crisis is creating anger, frustration, and depression, often resulting in homelessness, violent crime, and even suicide. People are dying as a direct result of this crisis. Families are being forcibly removed from their homes with nowhere else to live. The foreclosure crisis is not simply a financial problem, measurable in dollars and cents and credit scores. It is breaking up families and killing people. And now, to those in greatest danger, to those without available, competent help anywhere else, the proposed rules will remove their right to legal counsel. These rules will take from many homeowners their only reasonable chance to save their homes. **Please reconsider.**

In order to equitably consider this issue, the FTC must recognize the true loan modification landscape described at length below. The cornerstone of the process is the banking industry. The FTC must recognize the overwhelming deficiencies in banking that are forcing homeowners to seek assistance elsewhere.

Before eliminating the legal assistance option, the FTC must be sure that a reasonable option remains for desperate homeowners to keep their homes.

BANKS DO NOT WANT TO DO LOAN MODIFICATIONS!

They say they do, but their actions scream out, "No we don't! Try and make us!" Only those void of any experience seeking loan modification, or with ulterior motives, could possibly argue otherwise. **It is essential the FTC recognize the relationship between banks and Borrowers, with regard to loan modifications; it is adversarial, not cooperative.** It is also important to recognize banks have superior knowledge, a superior negotiating position, and a propensity to delay, dissuade, mislead, and deny qualified applicants. Given this adversarial relationship with a far superior opponent, it is unconscionable to prohibit or unduly restrict a Borrower's right to consult with and retain legal counsel. That would be the result of the proposed rule changes. The matter of keeping or losing one's home is far too important to effectively eliminate the rights of Borrowers to be treated fairly and lawfully in the process.

Following are examples in support of the above assertion.

Submission of Application Documents - The beginning of the loan modification process, submission of application documents, should be a relatively simple, straightforward, and quick process. Unfortunately, that simple step is made difficult, frustrating, and time-consuming by banks.

Fax Submission - Last year, I had difficulty submitting a loan modification application to ABC Mortgage (actual bank name omitted, but available upon request). All applications were to be submitted via a specific fax number. However, that fax number was perpetually busy. I tried at all hours of the day and night. I asked repeatedly for a different fax number, but was told **that was the only fax number in this entire large lending institution available to receive loan modification applications.** I asked many people, including supervisors and managers, if I could fax the application to their direct line. I asked if I could mail the application, or email it, or overnight it, or even fly to their office and personally deliver it. The answer was always a firm NO. ALL loan modification applications must be faxed to that number, and to no other

number, and would not be considered if received in any other manner. Finally, after unsuccessfully faxing for more than a week, early on a Sunday morning, the faxed application went through. There was no technical reason to use this fax number. The applications weren't electronically loaded into a computer system through this number. They were printed and distributed. This was simply a method whereby the bank could dramatically slow the process of receiving applications. The bank wasn't overly concerned about the inconvenience or frustration to Borrowers who were effectively prevented from applying for modifications. In my case, they also made no exception for those Borrowers threatened with foreclosure.

Email Submission - A few months ago, DEF Bank (actual bank name omitted, but available upon request) initiated a rule whereby attorneys representing Borrowers would be required to scan and email loan modification applications to a specific email address. Unfortunately, the bank required so many documents to be included with the application that their email server was unable to receive the oversized email applications. The problem was not our email server, it was theirs. The bank admitted its problem, but still would not accept applications via any other method than through this email address. There might still be a simple solution to this problem... email the application in portions. Simple, but unacceptable to the bank. It would not accept anything other than complete applications. Zipping the documents would not work, either. Technical assistance had to be brought in to reduce applications to the size required by the bank servers.

Loss of Documents - In addition to the difficulty of submitting a loan modification application, banks more often than not lose all or portions of those submissions. They also will confirm that they received the documents, and weeks or months later deny ever receiving those documents; even in the face of an electronic fax delivery confirmation, or their prior recorded conversations about the documents they had received. This is a common complaint from almost every person who has submitted a loan modification application. One has to wonder, since it happens so often, if documents are intentionally or systematically misplaced. Whether the product of incompetence or intent, the result is the same... delay, delay, delay.

Difficulty of Submission is only one of many Artificial Roadblocks - Throughout the modification process, banks have found new, ever more frustrating opportunities to slow or halt the modification applications.

Updating Documents - Banks are notoriously slow at reviewing loan modification documents. Over the last few months, banks have come up with a new roadblock for loan modification applications... age of documents. GHI Bank (actual bank name omitted, but available upon request) now requires financial documents to be re-submitted every 30 days. Do you know how tough it is for a self-employed person to prepare new P&L Statements every 30 days? Many aren't able, and so must pay an accountant to do so? Why must these documents be continuously updated? It is because GHI bank can't review the documents in a timely fashion. What happens if you don't update your documents? The file will be closed and you will no longer be considered for a modification. The bank is then able to shift the blame for the failed modification from the bank to the Borrower... "another Borrower who didn't submit documentation" is a major classification used by banks for rejected modifications. For every such rejection, the FTC should be suspicious. Banks make it extremely difficult, even for professionals, to simply submit documents. Borrowers and their advocates are trying desperately to submit the documents banks request in the timeframe requested. Banks sometimes make that a futile effort.

Tax Returns - Recently JKL Bank (actual bank name omitted, but available upon request) informed me that a loan modification application would not be considered because the Borrower's tax return was hand-written. A new rule from the Loss Mitigation Department required all copies of prior year tax returns to be typed. Of course, they also had to be exact copies of what was submitted to the IRS. That means if you submitted a hand-written tax return to the IRS, as millions of Americans have, it would be impossible to comply with this new rule. When asking to speak to the department that initiated this rule, I was denied. I was told 'Nobody is allowed to speak to the Loss Mitigation Department.' Of course, the bank already had a signed 4506-T form granting it easy access to the Borrower's tax returns. However, the loan modification would not be granted unless the Borrower complied with this new, impossible rule. The bank could have easily acquired copies of the Borrower's actual tax return. Yet, it elected instead to change this simple task into an impossible requirement to be completed by the Borrower.

Incapable Bank Personnel - Inexperienced, untrained, bureaucratic, uncooperative... are among many less complimentary descriptions of the people from whom my clients have directly requested a loan modification. Among the endless examples of lengthy hold times, hang-ups, rude and unknowledgeable respondents, inconsistent and conflicting responses, here's a recent one...

On January 28, 2010, a bank representative from GHI Bank told me a Borrower was denied a modification because he had a **negative property value.** I disputed that assessment and argued that although the property value had dropped, it was still positive. In fact, it is almost impossible for a home to have a negative property value. After a lengthy conversation in which I would not accept this decision and the banker would not allow me to speak to his supervisor, the banker put me on hold. He came back about 15 minutes later, after talking to his supervisor, and reported the application didn't pass the NPV test. Then I got it! The banker thought NPV stood for Negative Property Value. He didn't know it stood for Net Present Value, the test at the core of the modification financial analysis. Amazingly, this banker didn't know the meaning of NPV! Regardless of his apparent inexperience and proven lack of knowledge, he had the authority to deny a request from an attorney to speak to a supervisor. What would the average Borrower say when told he was denied a modification because he had a negative property value? He wouldn't know what to say or do, and wouldn't receive much help from this banker. That would simply mark the end of the modification application. By the way, we subsequently obtained a loan modification for this Borrower.

Incorrect Denials and Refusal to Provide Written Substantiation - Banks often initially deny modification applications we submit. Inevitably, we learn the bank has made an error. Sometimes their income figures are off by thousands of dollars per month, and have no resemblance to the figures or pay stubs submitted. Sometimes the bank's estimated market value of the property is off by hundreds of thousands of dollars. **Input errors and gross mistakes in property values are frequent causes of wrongful loan modification denials.**

The Mysterious NPV Test - One of the most common justifications of banks as to why a loan modification is denied is "failure of the NPV test". This phrase stops most Borrowers in their tracks. Borrowers don't know what the NPV test is, much less how to conduct one or verify the accuracy of one. The NPV test is the

key financial test for the Making Home Affordable Loan Modification Program. NPV is a sophisticated financial analysis methodology. This is the test that determines whether the bank will make more money by providing a Loan Modification or by Foreclosing. How can Borrowers fight what they don't understand? To make it more difficult, the bank will not provide a copy of the NPV test or its results. That is top, top secret!

Fortunately, this Law Firm is very familiar with NPV tests, and conducts one for every client. Loan modification packages are not submitted from this Firm unless the Borrower passes the NPV test. However, we often hear from banks that our applications have been denied because the Borrowers did not pass the NPV test**.** This is an important point, because **we inevitably find the banks made errors when performing the NPV test.** We then identify the errors and eventually succeed in obtaining the loan modification more than 90% of the time. We don't keep statistics on how many times the banks denied an application for failing the NPV test, and subsequently approved the loan modification, but there have been dozens of cases in this office. **A rough estimate, based solely on my personal experience, is that banks bungle the NPV test and generate the wrong result 15% of the time.** It is not uncommon at all. There have also been many cases in which Borrowers were denied modifications due to the NPV test before contacting our office for assistance, and subsequently were approved. **Banks are routinely making errors when conducting the mysterious, all-important, top secret NPV test.** Unfortunately, bureaucracy prevents most Borrowers from ever progressing beyond that point.

Banks are doing an incredibly poor job. I wouldn't believe how bad if I weren't in the middle of it every day. Loan modification is a bumbling, bureaucratic process, uncharacteristic of banks, in which qualified applicants are inappropriately and routinely denied loan modifications, apparently more often than not. It appears from unofficial reports that somewhere between 1% and 10% of applicants are being approved for permanent modifications, and I believe those estimates are high. I can only speculate as to why, but banks unmistakably do not want to complete loan modifications. **With a 1 - 10% success rate, banks have categorically proven they cannot or will not provide loan modifications to the multitude of qualified Borrowers.**

In March of 2009, a bank could blame loan modification problems on new processes, unforeseen volume, and lack of trained personnel. Now, a year later,

these are no longer valid excuses, and the overall service is no better; perhaps worse. Rules are put in place at major banks to slow and frustrate the process, with no viable benefit to the bank or the Borrower. **The artificial roadblocks and bungling processes cited above reflect an intent to fail, not an inability to succeed.** Banks are not known for inefficient processes or intellectually challenged personnel. The bureaucratic, inferior loan modification process is uncharacteristic of the detailed, financially sophisticated, professional nature of banks. The process appears to be designed, and occasionally modified, to frustrate and deny loan modification applicants, whether qualified or not.

Loan Modification Legal Documentation - If a Borrower receives an offer of a modification, there will generally be associated legal agreements requiring Borrower acceptance. Many of these agreements include language waiving important Borrower rights which may be vital to successfully defend a subsequent foreclosure action by the bank. This language is generally not labeled "Waiver of Important Borrower Rights" or otherwise preceded by a strong caution. There is usually no written suggestion that one should seek legal counsel before signing the document. **Borrowers almost never realize that by signing this document they're giving up important rights that could very well result in the unnecessary loss of their home at a later date.** Your proposed rules are effectively denying Borrowers the right to counsel, and encouraging competent attorneys to abandon or not initiate practice in this area.

How will the proposed FTC Rules impact attorneys?

The proposed rules will eliminate the ability and desire of competent and reputable attorneys to assist homeowners in desperate need of representation. As they stand, the rules will virtually eradicate the practical ability of ethical, law abiding loan modification attorneys to ever get paid, absent legal action against their former clients. Eliminate reputable legal resources, and Borrowers will seek help, legally or otherwise, from exactly the type of firms the FTC seeks to eliminate. The FTC will breathe new life into those companies.

Prohibition against collecting upfront fees prior to a documented modification offer would prevent reputable, capable attorneys from assisting clients with loan modifications for the following reasons:

1. **Cash Flow of the Law Firm–** It takes months for a bank to approve a loan modification, and most often that approval is only for a three month trial modification. For a permanent loan modification, anything less than a six month wait is rare. For a law firm whose primary practice area is loan modifications, how will it pay its own bills while waiting for approvals? In most cases, it will not be able to do so from corresponding legal fees. This will also effectively prevent attorneys from establishing a new practice in this area, further minimizing the availability of qualified legal assistance.
2. **Cash Flow of the Borrowers –** Loan modifications are naturally and appropriately calculated to require nearly all of the Borrowers' monthly disposable income and current savings, which are usually minimal. For non-MHA loan modifications, a sizable down payment, often in excess of all of the Borrowers' savings, is frequently required. It is rare for Borrowers to have any available savings or disposable monthly income after starting a loan modification. It will be a stretch for most Borrowers to meet the minimum obligations of the trial modification. Therefore, in most cases, there will be nothing available to pay attorney fees. Also, there will be little motivation for the Borrower to pay his attorney, because the loan modification will have already been granted. Payment of the attorney fee will no longer be necessary to save the home. In fact, paying the attorney after the modification might then cause the Borrower to lose the home. **By design, the Borrowers will not be financially able to pay their attorneys after the loan modification is granted.**

   Please do not underestimate a financially distressed homeowner's ability to rationalize to himself and others why the attorney doesn't deserve his fee, or his full fee, absent the threat of the Borrower losing his home. The Borrower who receives a loan modification with a 3% interest rate, who has a friend next door who received a 2% loan modification, may decide his attorney should not be paid a full fee or any fee at all because he didn't do a very good job.
3. **The proposed provision whereby no fee could be collected without a documented loan modification will eliminate any experienced attorney's confidence of ever receiving a loan modification fee.** Banks generally refuse to send copies of loan modification documents to attorneys, even if requested to do so by the attorney and Borrowers. **Some, perhaps most, banks refuse to issue**

a copy of the final, fully executed, loan modification agreement to the Borrower or his attorney. I don't believe I've ever seen a fully executed, permanent loan modification agreement. As soon as Borrowers learn they can easily avoid paying attorney fees by simply not providing a copy of the loan modification agreement, attorneys will be unable to collect those fees. **It will be a simple matter for Borrowers to avoid the obligation to pay attorney fees under the proposed rules.**

4. **The elimination of up-front fees will put Borrowers and their attorneys at odds over fees** - This will dramatically alter the tone of the loan modification business for attorneys. It will change from a personally gratifying endeavor to save the homes of distressed Borrowers, into an inevitable, bitter battle with clients over fees. Loan modification attorneys will spend more time trying to collect fees than modifying loans, and will be forced to sue former clients and seek liens against the homes they worked so hard to save for those clients. Not only will attorneys be forced to double or triple their fees to cover bad debts and collection costs, the massive aggravation in dealing with the banks will then be surpassed by the aggravation of the formerly gratifying interaction with clients.

The prohibition against attorneys advising their clients not to talk to banks will often have a devastating impact on those clients - Consider the following three examples:

1. A Borrower, with a first mortgage with Wells Fargo, took a call from his second mortgage lender, JKL Bank (actual bank name omitted, but available upon request), regarding his overdue payments. He stated that he couldn't come current with JKL right now, but that he was getting back on his feet with the help of the Wells Fargo HAMP trial modification for which he was just approved. He hoped to come current with JKL in the future, but couldn't at this time. Unfortunately for the Borrower, his checking account was also at JKL. After the call, JKL emptied his checking account, causing several checks to be dishonored, including the Borrower's first trial modification payment to Wells Fargo. Besides his checks bouncing, that also left the Borrower with no funds to make good on the initial trial modification payment to Wells Fargo. The Borrower therefore failed the trial modification and was told he would be permanently

ineligible for a HAMP modification. Note that emptying checking accounts of Borrowers, without prior notice, is not an uncommon action among banks. Our clients have often been shocked to experience this financially damaging event (before being advised by this office).

2. Banks often "steer" clients on recorded calls into making statements, true and untrue, which are against the Borrower's best interests. A single Mom was told by an MNO Bank (actual bank name omitted, but available upon request) associate that she didn't qualify for a modification, and needed about $500 more monthly income in order to qualify and prevent foreclosure. Then he asked her if she received any support from her daughter's father. She responded that she did receive $500 in monthly child support, although it was always in cash, and never deposited in her bank, and there was no court order requiring child support. Several months later, MNO sent her a formal denial for a modification. Unbeknownst to the Borrower, the $500 in child support she never actually received, was the precise amount necessary to **disqualify** her for the HAMP modification for which she otherwise would have qualified. MNO didn't mention that in the denial letter. Was the bank associate's conversation intentional "steering" or was it an innocent attempt of an unknowledgeable banker to help this woman? It doesn't matter. The result was the same.

3. Recently, on a national news program, a Chicago Borrower told of how he lost his job and contacted PQR Bank (actual bank name omitted, but available upon request). About 8 months later, still unemployed, and with his home scheduled for a foreclosure sale, he received a letter from PQR. His loan modification request had been denied because his 'financial problems were only temporary.' When previously asked by the bank if his financial problems were temporary or permanent, he had answered "Temporary" with hopes of landing another job soon, which he didn't. Answering "Temporary" to that question disqualified that Borrower for a HAMP modification. Answering "Permanent" to that question can disqualify a Borrower for most other types of modifications. Answering "I don't know" can enable the bank to make the decision and thereby disqualify the Borrower for whatever type of loan modification he is being considered. For speculative questions like that, for which nobody knows the true answer, there is only one good answer... "Please call my attorney."

A bank has the ability to use the Borrower's unwitting answers to seemingly benign questions to disqualify him for a loan modification. They also have the ability to "steer" Borrowers into making statements that will, unbeknownst to the Borrowers, disqualify them or hurt them rather than help them. Banks have an unfair advantage of superior knowledge and bargaining position when speaking to Borrowers about loan modification matters, and they sometimes use that advantage to the severe detriment of their Borrowers. Asking the bank to speak to his attorney, puts the Borrower on a level playing field. **Prohibiting attorneys from suggesting their clients should not talk directly with their bank will result in the inappropriate denial of loan modifications.** Please don't be fooled into believing it will expedite the process of loan modification approvals. It will only expedite inappropriate denials.

The limited exemptions for attorneys handling foreclosures and bankruptcies will be too little, too late for attorneys and Borrowers - People shouldn't be forced to wait until they are in foreclosure and/or bankruptcy before they can get qualified legal advice on such an important matter? A person shouldn't have to devastate her credit for a decade and risk losing her home before a qualified attorney with her best interests at heart can even discuss the matter with her? Skilled attorneys often cannot prevent a foreclosure sale for a property deep in foreclosure or bankruptcy proceedings, even when the homeowner clearly qualifies for a loan modification. Courts are efficiently granting foreclosure judgments and ordering sales daily, even when qualified Borrowers are under review for HAMP or on a HAMP trial modification. **Qualified assistance in the loan modification process frequently avoids bankruptcy and foreclosure.** The proposed rule, effectively denying timely counsel, will cause many homeowners who are qualified for a loan modification, to unnecessarily fall into foreclosure or bankruptcy, and unnecessarily lose their homes.

Following is the Background from which I make these comments - My Law Firm consists of three licensed attorneys and five paralegals/administrators. Every paralegal has a college degree. Each attorney has a JD, an additional graduate degree, and more than 20 years experience in the real estate industry. One attorney has an LLM. Another is co-author of the Illinois Mortgage

Foreclosure Act, and a former partner at one of the largest Law Firms in the world. My background includes a JD/MBA and a practice devoted almost exclusively to foreclosures and mortgage defaults for the last 10 years. Loan modification and foreclosure defense is the primary practice area of my Firm.

Our fee for a loan modification is $1,500, all of which is collected up-front; but often in installments for those who don't have sufficient funds. $500 is a non-refundable processing fee. However, I have refunded that $500 fee in a few instances when I felt it was warranted, even though clients have never requested I do so. The remaining $1,000 is placed in an Interest Only Lawyer Trust Account, an IOLTA, and is not earned or withdrawn until and unless a loan modification is secured for the client. If the client does not receive a loan modification, a prompt refund of $1,000 is made. In this infrequent case, it will have cost the client $500 for us to make the effort on his behalf. There have been no fee disputes that were not resolved to the satisfaction of our clients, whether or not they received a loan modification.

Over the past year, my law firm has successfully obtained loan modifications for hundreds of clients. **Before coming to us and paying $1,500, all or nearly all of our clients contacted their bank and attempted to get a loan modification.** With all the publicity advising "never pay anyone a fee for a loan modification, just call your bank", why would anyone pay $1,500 before trying to get a loan modification himself? Before coming to us, many of our clients were formally denied. The rest were verbally denied or otherwise convinced they would never be approved for a loan modification. From that group of rejected and dissuaded clients, our success rate in obtaining loan modifications for first mortgages on primary residences is over 90%. All of our approved clients who had previously contacted their bank on their own were misled, misinformed, ill-advised, or improperly denied a loan modification. The banks' success rate with our group of hundreds of Borrowers was 0%, compared to our success rate of over 90%.

Please note our clients come from all walks of life, and are not just the "uneducated masses". They include doctors, lawyers, business owners, and bankers. **One current client is a Personal Banker at the bank which**

holds his mortgage, and he has been unable to get his loan modified after months of trying. Prodding banks to do a loan modification is not an easy job for the professional. Imagine how tough it must be for those of moderate means or education, or for those for which English is a second language.

The FTC intentions are obviously good; eliminate incompetent and dishonest companies preying on financially distressed homeowners. <u>However, the approach is to eliminate all companies assisting the financially distressed homeowners, good or bad, helpful or not.</u> Unfortunately, banks are doing such a shameful job of loan modification that it would be a terrible injustice to eliminate all available help to distressed homeowners. **The obvious solution is to redirect the FTC efforts toward eliminating only the incompetent and dishonest loan modification advocates.** How to do that is the tough question.

The FTC's approach is in direct conflict with its overall goal of providing aid to the financially distressed homeowners? The FTC is proposing rules that will eliminate honest and competent loan modification law firms, some with success rates over 90%, in favor of banks with a combined failure rate probably in excess of 90%. **Banks have proven overwhelmingly that they cannot or will not help more than one in ten homeowners, even if they do qualify for a loan modification.** It would be unfortunate to leave distressed homeowners in the hands of banks, with less than a 10% chance of saving their homes and with no other available options. The new rules will multiply the already severe frustration and distress levels. It will also reduce the loan modification approval rate.

There are far superior ways to accomplish the worthwhile goal of the FTC. Following are suggestions to help eliminate predatory loan modification practices without jeopardizing the ability of desperate homeowners to avoid foreclosure:

1. Call Lisa Madigan - The Illinois Attorney General enacted a law in 2009 prohibiting anyone other than Illinois licensed attorneys from charging up-front fees for loan modifications in Illinois. This is a good start, but needs better

enforcement and publicity. My Firm has helped many Borrowers obtain loan modifications after they paid thousands of dollars to California and Florida companies. Those out-of-state companies continue to call Illinois homeowners, and those homeowners continue to come to my office after failed attempts at loan modification and thousands of dollars paid in unrecoverable fees. **Prohibit loan modification companies from taking up-front fees unless they are licensed attorneys regularly conducting business out of publicly accessible office space in the state in which they provide loan modification services.** Put loan modification firms in a position where their clients can easily visit their offices at any time. Don't allow them to be an out-of-state 800 number. They'll be less likely to take advantage of people who can pop into their office at any time without notice. Disgruntled clients will find their own efficient ways to self-regulate dishonest and incompetent companies.

2. Fix the Banks - The painful, horrendous job done by banks, with less than 10% approval rates, drives Borrowers to anywhere but the bank. We see, in nearly every case, that the Borrowers that come to our office have been inappropriately denied a modification, or otherwise convinced they would never get one. When faced with the choice of losing their home or seeking help elsewhere, Borrowers will naturally look elsewhere. FTC, please don't take the "high probability of success" options away from the homeowners. **Fix the problems at the banks so the homeowners aren't forced to look elsewhere. Make banks compete with the "high probability of success" options, such as my Firm.** Take these options away, and banks will have less motivation to do loan modifications than the apparently insufficient amount they have now.

3. Licensing - This option may take a while to develop, but it is clearly a superior alternative to the FTC's proposed rules. **This could solve the FTC's concerns by creating capable loan modification assistance for homeowners, rather than taking it away.** It is probably the best option available for short and long term relief of the problems... Make all non-attorneys working on loan modifications become licensed to do so. Better yet, include that license requirement for attorneys doing loan modifications. That will insure that they are also competent, and not simply "fronting" for incompetent or dishonest loan modification companies. Give this licensing assignment to the same capable and objective groups handling real estate, banking, and/or mortgage broker licensing. Require more stringent experience and education requirements for

any loan modification office managers or business owners. Advertise to the public that they should use licensed attorneys and certified loan modification specialists only. This would go a long way toward eliminating the incompetent personnel in the loan modification companies. **Get the banks' support and cooperation in the process, and those banks may one day be able to offload some of their inefficient processes to approved firms, thereby further increasing the probability of success of qualified loan modification applicants.** This is clearly the best long term option, and if it were available today, would be the best course of action. It should be initiated now, even if it will not take effect for some time.

4. Escrow Up-Front Fees - This is an alternative that would still make it difficult for attorneys to operate from a cash flow perspective, but would provide assurance the attorney would receive her fee when successful. Attorneys would likely have to pass on the cost of escrowing to clients. However, if allowed to escrow the funds in his or her own IOLTA, the time and cost to do so would be minimal. Violation of the rules of an IOLTA, an account which is often audited, can easily result in the disbarment of an attorney. Therefore, it is unlikely attorneys would often violate the escrow requirements. Also, the interest from IOLTA accounts provides legal assistance to the financially disadvantaged. The second best alternative would be to allow the escrows to be held by licensed title companies in the state where the property is located. This would be a more difficult and costly process. It would still be far superior to delaying the collection of fees to the time when clients are least capable and motivated to pay them, but would eliminate the charitable benefit of the earned interest.

Following are responses to matters specified in sections of your solicitation for remarks:

Section 322.2(h) - Don't include Short Sales, Deed-in-Lieu, Contract Review, and endeavors exclusively characterized as the practice of law. Laymen clearly need legal assistance in these matters. It would be unnecessary and inappropriate to restrict access to legal counsel in these areas. These are not high-risk areas for abuse by attorneys, and they are not the types of assignments that attorneys can wholly delegate to non-attorneys.

Section 322.2(i) - Don't exclude agents of servicers and thereby allow law firms and companies with a conflict of interest to offer loan modification services to Borrowers. - Recently, some Chicago area Law Firms, which represent banks in many thousands of foreclosure actions, began offering loan modification services to the Borrowers on which they are foreclosing. This certainly appears to be a conflict of interest potentially detrimental to those Borrowers. Please don't cripple honest, capable attorneys with the best interests of Borrowers at heart, and exempt these large Law Firms which have a massive financial interest in serving the banks', and not the Borrowers', best interests.

Section 322.5 - The prohibition on collection of any advance fees will be devastating to attorneys and Borrowers. It will be most damaging to the most needy. This topic is discussed in general and at length above. In addition to those comments, **please consider the impact on the most needy** with the most work required for a successful modification, **and therefore the smallest chance of achieving success.** In my practice, I try to give prospective clients a reasonable estimate of their chance of success. Of course, I make it clear that no one other than the bank can guarantee a modification, and one should be suspicious and careful of anyone else who offers such guarantees. For those with an extremely low likelihood of success, I make that fact clear to them. Financially, I don't want to take on those clients, because I will likely lose money in the process. However, if they can't get qualified help elsewhere, and want my help, even in light of my projection of failure, I will generally not refuse them. Under the proposed rules whereby I will make no money if I'm not successful, I'll be financially forced to turn down these clients. Over the course of the last year, I have had a dozen or more clients who I could not have agreed to help if the proposed rules had been in place.

One example... A man came to my office and told me the bank was going to sell his mother's home at a foreclosure sale tomorrow, at noon. Clearly the chance of avoiding the foreclosure sale and achieving a loan modification was a long shot. Under the proposed rules, I would not be financially able to bother with these types of low-probability cases. Fortunately for this family, there were no such rules at the time. I spent about 8 hours on that assignment, and in less than 24 hours after the client came in, I was able to stop the sale and negotiate a trial modification for that woman. Today, she lives

in the home and has an affordable, permanent modification. What could have been done in Illinois under the FTC proposed rules? Nothing. I could not have taken the case. It was too late to stop the sale, and there was no legal justification to prevent the sale confirmation.

The proposed rule will make it much more difficult and expensive for any distressed homeowner to find qualified help if he or she is self-employed, works as a salesperson, is on unemployment compensation or temporary disability, owns rental property, or has a mortgage with a bank that does not participate in MHA. In order for my business to survive, the proposed rule might dictate, or at least encourage, that I immediately implement a policy whereby we take no new clients in the above categories. These clients take the most work and time, and have the lowest probability of success. Taking these cases, with the possibility of not being paid at all, would no longer make business sense. That is especially true when there remains so many potential clients not in those categories.

Prohibition of advance fees will increase overall fees for several reasons. Even for a Law Firm with a success rate of 90%, fees will have to be increased to generate the same revenue for the same amount of work, because the firm will earn nothing for 10% of the cases. The inevitable, high cost of bad debt will also increase the fees. The legal costs and time delays associated with collections will also increase the fees. It is reasonable to project the fees would increase by a minimum of 25%, and the most needy and difficult cases as defined above might not be able to find qualified help at any price. As much as I want to help distressed homeowners, my office is not in a position to provide free assistance to 10% of my clients.

Section 322.5(a) - Competent attorneys couldn't possibly abide by the definition of results required to earn a fee. This definition is grossly misguided and unnecessary. Here's an illustration... Is your lender HSBC? If the answer is yes, we can't help you. Yes, we could assist in modifying your loan, and perhaps provide you with the necessary time to rectify your financial hardship and avoid foreclosure, but under the proposed rules, we could not charge any fee for doing so. It is not unreasonable in some cases for a lender that doesn't participate in HAMP to provide a 3 - 5 year affordable modification, and take another look at the Borrowers' financial condition at the end of that term. Many Borrowers would be thrilled to receive those terms. Certainly, Borrowers

will always have the opportunity to initiate further discussions with their lenders at the end of, or during, any modification term.

There are many examples for which the proposed definitions in this section would be inappropriate and would prevent the needy from obtaining assistance. Many of my past clients provide good examples. One client was unemployed for an extended period and fell far behind on mortgage payments. He found a new job, but after months of effort, he was unsuccessful in obtaining a modification from his bank, and so engaged my Law Firm. I was able to get him a modification with higher payments than his previous mortgage payment. It was affordable because his new job paid more than his old position, and it was consistent with my stated intentions and the client's expectations. This modification avoided loss of the home to foreclosure, resulted in an exuberant homeowner, but would not have qualified for a fee to my Firm under this proposed rule.

One large lender, by policy, only allows a 6-month modification, with 6-month extensions available if a Borrower qualifies each time, for up to 2 years. Other lenders have provided two year, or three year, or five year modifications (which might quickly turn into a standard 4-year and 364-day term), with terms reverting back to the original mortgage terms thereafter. These modifications have avoided foreclosure for my clients, or otherwise given them the time they needed to rectify their financial problems. These modifications were successes which resulted in elated clients. Many Borrowers who are far in arrears, but who have secured new jobs or otherwise improved their financial situations, would be delighted to receive modifications whereby they would no longer be in default and their payments would then be affordable. These payments might be slightly less than their prior payments, or even increased. The affordability might be due to an extended amortization or improved income.

For approved loan modifications, I wouldn't keep a fee unless the financial benefit to the client was at least double the amount of my fee, or otherwise clearly and significantly benefitted the client well in excess of the amount of my fee, or otherwise met the agreed goals of the modification. That benefit could easily be detailed in the Attorney/Client Agreement. As in the case described in the paragraph above, it was never imagined or intended for the mortgage payments

in the modification to be less than those prior to the default. I have never had a fee dispute that was not resolved to the satisfaction of the client.

A repayment plan or a forbearance agreement, **which are modifications of the mortgage agreement**, may be exactly what some Borrowers need in order to avert a foreclosure. **Please don't disqualify any such plan from earning a fee, especially if it saves the home for the Borrower!** The case mentioned above was a repayment plan that kept the Borrower out of foreclosure. Also, the bank would not agree to any plan when approached directly by the Borrower, thereby forcing the Borrower to seek help elsewhere. Denying fees for this type of service would have prevented this homeowner from getting help, and would have resulted in the unnecessary loss of his home to foreclosure.

Section 322.5 - Documented Proof of Loan Modification Offer - As discussed above, lenders and servicers typically won't provide this to attorneys, and often won't provide it to Borrowers. It is not feasible to implement this requirement unless you also mandate that the servicers and lenders must timely provide such proof to attorney advocates in the form of email, fax, or letter, at the time the offer is made to the Borrower.

Section 322.5 - Limiting, Rather than Banning, Up-Front Fees - As discussed above, it would be severely detrimental to Borrowers and capable attorneys to ban up-front fees. It would also prevent, or make financially prohibitive, access to loan modification assistance for the most needy and difficult cases. Limiting the non-refundable portion of the fee, as my Firm does, to $500 per mortgage, makes more business sense. That amount funds our efforts and allows us to assist almost all those who come to us in need, difficult or not, high probability of success or not. The $1,000 Service Fee is escrowed and never drawn on until and unless we secure the modification.

Section 322.5 - Placement of Fees in Escrow - This is an excellent alternative to prohibiting up-front fees, and will allow honest attorneys to stay in business. This has been our standard practice since the beginning of our formal loan modification efforts. As discussed above, all of our Service Fees, i.e., the $1,000 refundable portion of the $1,500 total fee, is placed in an Interest Only

Attorney Trust Account, an IOLTA. This money is contractually prohibited from being withdrawn from the IOLTA until and unless the modification is approved. Interest on those funds goes to support legal assistance for the needy. These Trust Accounts are monitored, audited, and regulated by the Attorney Regulatory and Disciplinary Commission. Misuse of an IOLTA is a serious offense and can cause sanctions or disbarment of an attorney. It should be noted, attorneys do have access to funds in their IOLTA. Attorneys do have the physical ability to remove and misuse funds from their IOLTA, but only at the risk of losing their license to practice law. Escrowing funds in IOLTAs would provide the most convenient, least expensive, and most charity beneficial method of handling loan modification fees. **Waiting to collect fees until the modification is approved is not a problem, as long as there is assurance the funds will be available once the work has been successfully completed.**

Section 322.5 - Right of Rescission - This is a fine idea. I will add it to my Client Agreements whether or not it becomes law. My recommendation would be to provide three business days. However, the occasion often arises whereby immediate action is required, such as in the case of an impending foreclosure judgment or sale. The Rescission Right should be waived to the extent of compensation for necessary, immediate action taken, if that intended immediate action is known by all parties.

Section 322.5 - Charging a modest up-front fee to every Borrower seeking loan modification assistance is essential to maintaining the availability of that assistance to the great majority of distressed Borrowers. As discussed above, all but the simplest MHA qualified loan modification applicants will find it extremely difficult and expensive to find capable assistance if there is a chance the service provider will receive no fee at all for the service. My recommendation is to allow $500 as the "up-front", non-escrowed portion of the fee. At our firm, that fee helps cover the cost of a 1 - 2 hour initial consultation with an attorney and paralegal, subsequent preparation of documents, and submission of the loan modification application.

Section 322.7 - The Limited Exemptions for Attorneys discussed here is far too limiting for bankruptcy and foreclosure attorneys, and does

not apply to loan modification attorneys. As discussed above this exemption is too little too late to prevent foreclosures or to save homes once embroiled in foreclosure. Absent any evidence suggesting foreclosure and bankruptcy attorneys are engaged in deceptive practices, there seems to be no justification for limiting at all the ability of these attorneys to seek the best possible outcomes for their clients in bankruptcy and foreclosure.

Section 322.9(b)(1) - The requirement that calls to or from an attorney's office be randomly monitored or recorded violates the attorney/client privilege and should not be a requirement of any Law Office. This Laws Firm does no telemarketing. However, calls from interested Borrowers are taken regularly. When calling a Law Firm, the caller has the right to do so without his conversation being monitored or recorded.

The Bottom Line - Banks are doing a highly publicized, easily verifiable, horrendous job at loan modifications. At a time when so many homeowners are threatened with losing their homes, the FTC is now considering the removal of the few competent and successful resources available to help those homeowners. Consider my specific case:

If a financially troubled homeowner comes to my office for assistance, I'll provide a free consultation. At that time, I'll analyze her finances and situation to determine if she will qualify for a loan modification. If she does, and if I accept her as a client, she will then pay me $1,500. At that time, she will have greater than a 90% probability of keeping her home. If she does not receive a modification, she'll receive a prompt refund of her $1,000 which has remained in my Client Trust Account, and the efforts of my office over several months will have cost her $500. If she is unsatisfied with my services, and requests me to do so, I'll refund her $500 also.

The proposed rules would either severely curtail my services, or force me to seek employment elsewhere, in a different line of work. If I do that, and if other attorneys must do the same, the Borrowers we would have served will be forced to seek modifications on their own. In that event, the likelihood the Borrower will be successful will drop to less than 10%.

The appropriate response to predatory loan modification companies is to seek them out and shut them down with an iron fist. There are many good ways to accomplish that. Shutting down all loan modification advocates is one way to do it, but only with a devastating blow to distressed homeowners, and a salute to the banks which have made such a mess of the loan modification landscape. The homeowners have suffered enough. The last thing they need or want is for the FTC to add to their troubles and further jeopardize their opportunity to recover.

Please reconsider.

Thanks for providing the opportunity to comment on your proposed rule changes. I would very much appreciate the opportunity to further discuss this matter or participate in constructive forums to improve the loan modification process and the plight of distressed homeo0wners.

Respectfully,

Rick Rogers, JD/MBA
Attorney