



S.J. MOBLEY & ASSOCIATES, LLC

Sara J. Mobley
Admitted in CO and OR

Jeff (J.J.) Lyons
Admitted in FL

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

Re: Mortgage Assistance Relief Services; R911003 – Proposed Rulemaking

Dear Sirs/Madams:

Thank you for the opportunity to comment on your above proposed rule. I fervently agree that the loan modification industry requires more regulation and I sadly recognize that need stems partially from dishonest actions committed by some in my profession. The FTC is to be commended on its zealous attempt to protect consumers from all entities that took advantage of homeowners who relied on them to help. Unfortunately, I believe that the FTC's zealousness in attempting to stringently regulate attorneys will result in the unintended consequence of causing more harm to consumers. The rule as written deprives consumers of much needed legal representation.

It is essential to have competent legal representation when negotiating a loan modification. While the government and servicers continually advise homeowners that loan modifications can be done without a third party's help and that free help is available, statistics show that this advice has done nothing to help homeowners. Dismal results from programs like Making Home Affordable and the HOPE Hotline have discouraged homeowners even more and increased the rate of strategic defaults. Making Home Affordable did little to nothing to help homeowners (*see*, <http://www.financialstability.gov/latest/reportsanddocs.html>) and the results from the MHA Call Center (HUD) for February 2010 are abysmal at best. The Center took almost 830,000 calls with only 430,000 even receiving "counseling". Of those receiving counseling only about 216,000 borrower's preliminary eligibility was determined. Almost 100% of our clients have attempted completing a loan modification on their own and/or going to HUD prior to requesting our services.

Navigating the world of loss mitigation in the servicing world is nearly impossible if one is not familiar with the industry. Attorneys are necessary for many aspects of loan modifications that aren't readily apparent to those not familiar with the industry. It is extremely unlikely that a homeowner can stop a foreclosure sale scheduled to occur in less than 24 hours. It would be nearly impossible for a Homeowner to rescind a sale that resulted in an REO. Even if the homeowner is attempting a straight loan modification with no other complications, the homeowners' confusion and frustration flourishes amidst lost paperwork, confusing documents, unreachable agents, and misinformation. Homeowners are often denied for a government modification due to a servicer error that can be easily corrected but the homeowner merely gives up because they have fought the system for so long. Few, if any,

homeowners know that there may be investor specific modifications available if they don't qualify for a government program. Further, a homeowner may be offered a loss mitigation option which only further damages their financial situation. It is essential that an attorney be available to advise homeowners of their options. The rule as written constructively denies the homeowner of that opportunity.

To allow consumers representation needed to help them understand all loss mitigation options and their ramifications, receive a loan modification with the best terms available, understand the contracts associated with the loan modification, and mitigate any damages potentially caused by the loss mitigation option chosen, the FTC must provide for broader attorney exemptions, specifically allowing the collection of upfront fees.

The rule as written allows for a very narrow exemption for collecting upfront attorney fees. Reputable attorneys experienced in loan modifications and other mortgage law issues would not be able to continue to practice and other consumer conscious attorneys would not enter the field, thereby leaving consumers to fend for themselves, which we have seen does not lead to a favorable result. Attorneys simply cannot operate a firm without collecting upfront fees. There is no set timeframe for the completion of a loan modification and attorneys without connections within the servicers are at the mercy of the servicer. It may take 4 weeks to 6 months or more (with the way the trial modifications have been extended lately) to complete a loan modification, all the while the attorney is working the file and must pay the costs associated with that file. With no upfront fees, the attorney must find a way to meet that overhead. This simply is not feasible.

Additionally, an attorney's aged accounts receivables would increase extensively. It is unreasonable for anyone to believe that clients are just as likely to pay their attorney bill after their legal matter is resolved as before. Attorneys would have to raise their fees to cover the uncollectable fees and costs associated therewith. In addition, attorneys have to contend with the ethical issues of collecting on attorney fees.

The rule's ban on collecting upfront fees will not only put reputable attorneys out of business, but it will also not do anything to deter unethical behavior. Ironically, the very attorneys whom the FTC intends to deter with the ban on upfront fee collection are the attorneys that will profit from the rule. While the rule is putting ethical attorneys out of business, the unethical attorneys are cashing in on an end-run around the rule. Remember that the rule allows the collection of upfront fees in connection with a bankruptcy case or court proceeding to prevent a foreclosure. Clients who approach an attorney with mortgage issues are already in financial troubles; many are angry with banks and have been led by the media to believe they are entitled to something because they were put in a predatory loan. Convincing a client to litigate and/or file bankruptcy would be easy. The dishonest attorneys will either push a client into litigation, bankruptcy, or even perform "pre-bankruptcy planning", thus allowing them to collect attorney fees as normal for the sham service performed in conjunction with the loan modification while charging a *de minimis* fee for the loan modification itself. Imagine the influx of mortgage fraud litigation and increases in bankruptcy filings.

In deciding to provide broader attorney exemptions in the rule, the FTC should consider that attorneys are already regulated by the states, are subject to strict ethical standards, and misconduct leads to severe sanctions. In fact, the Rules of Professional Conduct implemented in most states already provide for the investigation and discipline of the majority of the dishonest and unfair acts this rule is written to prevent.

The sad truth is that consumers will always be victims of some scam somewhere. Scammers will always exist in every profession despite any rule or regulation because that's what scammers do – they find a way to work around the rules so they can keep up the scam. The best we can hope to do is implement rules and regulations to eliminate as many scammers as possible. The FTC has started that process in drafting this version of this rule.

There is no question that homeowners need help navigating the loss mitigation world, especially when pursuing a loan modification. There is no question that MARS scammers will exist for as long as the housing crisis continues. There is no question that the ban on collecting upfront fees will put the ethical, experienced attorneys out of business. There is no question that government programs and servicer programs are not working. There is no question that homeowners will hungrily seek help from anyone who offers it, despite their better judgment or any warnings the government provides. These facts we know. However, the answer to the most important question in consumer protection rests in the hands of the FTC should this rule be enacted without the attorney exemption for collecting upfront fees: who's left standing for desperate homeowners to turn to once reputable attorneys are regulated out of the business?

Thank you for the opportunity to comment on the proposed rule. I would welcome the opportunity to further discuss this matter or provide assistance to the FTC in zealously protecting homeowners.

Sincerely,

/s/ Sara J. Mobley, Esq.
Sara J. Mobley