



*Re: Comments on FTC Proposed Rulemaking MORTGAGE ASSISTANCE
RELIEF SERVICES: 16 CFR Part 322 [RIN 3084-AB18]*

Tuesday, April 13, 2010

Greetings:

I am an attorney licensed to practice in the states of Pennsylvania (since 1986) and Ohio (since 1981: presently inactive in Ohio) and before the US Bankruptcy Court for the Eastern District of Pennsylvania. Since May 2009, I have been a registered member of the DMM Portal (a defense counsel-initiated mortgage modification submission and tracking web site in which the originators of some 75-80% of the nations' mortgages voluntarily participate). I have also received the requisite training to negotiate mortgage modifications for indigent homeowners in the pioneering nationally recognized Philadelphia County Philadelphia VIP mortgage foreclosure diversion program. I also have participated in mortgage foreclosure diversion conferences under the correlative Bucks County, Pennsylvania.

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I have recently authored a 2 part feature article on alternatives to bankruptcy for consumers which can be viewed at [Rocket Lawyer.com](http://RocketLawyer.com).

In addition to a J.D., I hold an honors MBA in Finance from the Ohio State University Fisher College of Business and have had extensive experience in corporate financial planning. I hold a post MBA Certification in the management of information systems (CERT/MIS) from Penn State.

I also hold a Diploma in Bank Management awarded by the American Banking Association. I am a lifetime member of both the Phi Beta Kappa and Beta Gamma Sigma academic honorary societies.

I wish to comment on this ill advised proposed rulemaking by the FTC.

Lawyers are the BEST and truly the only proper advocates for beleaguered homeowners because it is we who are empowered as officers of the court systems we serve to litigate against the bank or lender on their behalf. Thus, it is we alone that the lenders take seriously. In addition, many lawyers also offer their client a defense against foreclosure, mitigation or diversionary representation (where available) and ultimately (if necessary) a bankruptcy petition filing to protect their homes if the negotiation attempt should fail. Further, lawyers are uniquely qualified to assist the homeowner to understand the legal implications of and determine which of the bewildering panoply of alternatives facing them will be the most effective in their unique circumstances.

That is, pursuing a mortgage modification is only one of many courses of action under the law of the state in which the client resides and in which the mortgaged property lies which may be available to the client to reduce their mortgage payment and/or save their home or, if such is impossible, to minimize the consequences of its loss, including without limitation:

(a) Refinance (if available)

- (b) Debt Settlement with the homeowner's unsecured lenders, to free up cash to pay the mortgage.
- (c) Repayment or workout plans,
- (d) State sponsored short term forbearance plans
- (e) Reverse Mortgage (if age 62 or older in my state),
- (f) Legal Defense of a Foreclosure Action,
- (g) Forbearance by Lender,
- (h) Pre foreclosure Consent Agreement,
- (i) Consent Judgment,
- (j) Short Sale,
- (k) Short Payoff,
- (l) Deed in Lieu of Foreclosure,
- (m) Act 91 (HEMAP), HERO Program or Act 6 in Pennsylvania and correlative programs in other jurisdictions where available,
- (n) Home Saver Advances (Fannie Mae or HUD),
- (o) State and Local Government Sponsored Foreclosure Avoidance Programs,
- (p) Court ordered residential mortgage diversion or conciliation process conference, (available in Philadelphia, Bucks, and other Pennsylvania Counties as well as in other states),
- (q) Loan forensics to detect and utilize instances of predatory lending to leverage a modification,
- (r) Recourse to the several federal and state consumer protection and fair lending laws, and/or,
- (s) Filing a petition in bankruptcy, typically a Chapter 13 Bankruptcy to protect the home.
- (t) A combination of two or more of the above, such as a Chapter 7 Bankruptcy and a mortgage modification.

This FTC rule is a classic overreaching "knee jerk" reaction which if adopted will in effect deprive millions of homeowners of the right to legitimate legal representation against the huge banks and historically predatory lenders which will correspondingly increase the ranks of the scammers (who have no license to lose and the wild frontier that is the Internet to exploit hence will continue to collect fees up front) and will only serve to accelerate the pace of foreclosures and Chapter 13 bankruptcies throughout our country.

Why will the needy homeowners not be served? Ironically, because as seems not to have dawned on the well meaning but misguided regulators, as a practical matter it IS NEARLY IMPOSSIBLE FOR ANYONE TO

COLLECT A FEE FROM A CONSUMER AFTER A MODIFICATION IS CONCLUDED.

*It is a pure and simple matter of human nature. The lawyer works on the mod for 3-4 months typically and then mod papers are sent by the lender direct to the borrower not to the attorney. There is no check made out to the lawyer and the client as in the typical insurance settlement. Unlike successful litigation, the already impoverished post mod client does not receive cash from the modification with which to pay a legal fee. He/she only receives a reduction in their mortgage which may, if lucky, now allow them to meet his/her family's monthly expenses. **Under this proposed regulatory scheme the attorney may not even bill monthly for services rendered during the course of the mod application process.** So the attorney is relegated to filing a multitude of small claims cases against clients who are largely "judgment proof". Hardly a cost effective practice! And the modification lawyer has typically made a large investment of personal and staff time and effort in gathering the needed documentation;; preparing and revising the mod package; following up with the lender; periodically apprising the homeowner of the status of the matter and negotiating a settlement with the lender over the course of many weeks and months.*

Also, the regulation as currently drafted requires attorneys and others, by implication if not expressly, to provide misleading guarantees of success to clients where no such guarantee can or ought to be given. No fee can be collected unless "success" is achieved per the wording of the regulation and yet not all cases will result in success, despite the very best efforts of the attorney. Indeed, where a temporary 3 month HAMP mod is granted which might be considered "success", the Lender can later turn around and deny the permanent mod based on its arcane internal "NPV" parameters or for other reasons having little to do with the original evaluation.

Unlike litigation however, again a large contingent fee is not available to the successful attorney. These are in essence small fixed fee cases akin to a Chapter 7 or 13 bankruptcy where fees are routinely collected in advance with no assurance of success being provided. At minimum, the no upfront fee rule should have a carve out (exception) for licensed attorneys who represent mortgage modification clients and offer this service as an alternative to bankruptcy NOT MERELY IN THE COURSE OF ONE. (See above.)

For these reasons, I and many others in the profession predict that lawyers will henceforth shun this field if the rule is adopted in its present form and thousands upon thousands of desperate and unwitting homeowners -- most of whom will have already have been given the "run around" by their lenders which is why they seek the services of a modification lawyer-- will be forced into the waiting arms of the scammers, precisely the result that this regulation is supposedly designed to protect consumers against. As a result of this, coupled with a lack of proper legal representation discussed above, in my opinion many more foreclosures and bankruptcies would result than would be the case were this rule not adopted.

In addition, this rule requires that in every case where a fee is to be charged, the attorney send a copy of the modification proposal to the homeowner. This in itself shows that the FTC does not have a correct understanding of the modification process. The lender almost universally sends the proposal directly to the homeowner. This would render it difficult if not impossible for the attorney to comply with the proposed rule.

In addition lawyers are licensed professionals bound to follow a code of ethics promulgated by the bar associations in the states in which they practice and hence the activities described in the rule are already in effect "policed" at the state level, where in my opinion all regulation of this type more properly resides.

In summary, this proposed rulemaking if adopted will fail to achieve what it sets out to accomplish and thus will just be further proof of the government's inability deal with the tragic foreclosure situation facing our nation. Therefore, this matter deserves further careful study before the rights of millions of homeowners to proper legal representation as well as their property interests are summarily foreclosed!

Thank you for this opportunity to comment on this proposed rulemaking.

Sincerely,

Christopher C. Carr, Esq.