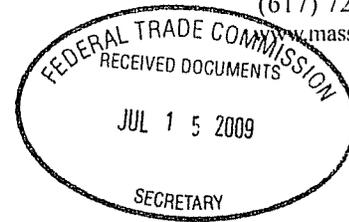


THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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MARTHA COAKLEY  
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July 13, 2009

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

**Re: Comment of Massachusetts Attorney General Martha Coakley  
concerning Mortgage Assistance Relief Services Rulemaking, Rule  
No. R911003**

Dear Commissioners of the Federal Trade Commission:

Thank you for the opportunity to comment on the Mortgage Assistance Relief Services Rulemaking, Rule No. R911003.

**I. General Overview of Comment**

Predatory lending practices that have led to the foreclosure crisis continue to besiege the nation and our economy. As the proliferation of risky, unfair and deceptive lending practices led to skyrocketing foreclosure rates, my Office has seen an increasing number of distressed homeowners preyed upon by unscrupulous parties trying to capitalize upon the foreclosure crisis. These unfair and deceptive activities include scam artists attempting to convince desperate homeowners to transfer ownership of their homes ("foreclosure-rescue schemes") or advertising and charging upfront fees with an illusory promise to help homeowners obtain loan modifications or other foreclosure-related services ("advance-fee schemes").

In response, my Office has sought to address the foreclosure-rescue and advance-fee schemes through regulation, litigation and other advocacy. In mid-2006, my Office began prosecuting individuals and companies engaged in foreclosure-rescue schemes. In June of 2007 we issued emergency regulations under the Massachusetts Consumer Protection Act, which became final in August of 2007. These regulations prohibit both

foreclosure-rescue and advance-fee schemes.<sup>1</sup> In December 2008 we began prosecuting individuals and companies engaged in advance-fee schemes in violation of our regulations.

Federal, state and local authorities need to address the impacts of the foreclosure crisis, such as foreclosure-rescue and advance-fee schemes. Unscrupulous actors will continue to prey upon distressed homeowners absent governmental intervention that seeks to protect these homeowners. We therefore applaud the FTC's existing efforts and enforcement actions, as well as its current step toward regulating foreclosure-rescue and advance-fee schemes. We welcome national consumer protection solutions to supplement state law and efforts in combating foreclosure-rescue and advance-fee schemes, both of which are nationwide concerns.

This Comment first describes my Office's recent experience in regulating foreclosure-rescue and advance-fee schemes under the Massachusetts Consumer Protection Act, in hopes that our experience and analysis will prove useful to the FTC as it tackles many of the same issues. The Comment then provides suggestions on the adoption of rules to address these issues. In summary, I urge the FTC to:

- Ban foreclosure-rescue schemes and the advertising thereof;
- Ban advance-fee schemes related to foreclosure assistance;
- Restrict attorneys from collecting advance fees for foreclosure-related services, excepting those attorneys who assist consumers with the preparation and filing of a bankruptcy petition or provide legal services in connection with court proceedings to avoid a foreclosure; and
- Place restrictions on the marketing of foreclosure-related services.

The Comment also provides additional responses to several of the specific inquiries posed by the FTC in its discussion of proposed regulations.

The FTC has acknowledged that the scope of its rule-making will not apply to certain federally-regulated entities such as banks or thrifts. Of import, federally-regulated banks and thrifts, among other entities, have thus far been resistant to mitigating the damage of the foreclosure crisis. These entities have failed to engage in consistent and responsive servicing practices and have not achieved meaningful loan modifications. This failure creates opportunities for scam artists to prey upon increasingly desperate homeowners. We therefore urge those federal agencies with regulatory oversight over banks and thrifts to follow the FTC's proactive lead and prevent such opportunities for unscrupulous companies and individuals by requiring their

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<sup>1</sup> A copy of those regulations, 940 C.M.R. 25.00-25.03, is attached at Exhibit 1, as referenced in the Appendix.

regulated entities to engage in timely, reasonable and meaningful loan modifications, where appropriate.<sup>2</sup>

## **II. The Massachusetts Attorney General's Regulatory and Enforcement Experience Concerning Foreclosure-Rescue Schemes**

Since I became Massachusetts Attorney General in January 2007, one of my top priorities has been assisting vulnerable consumers who have become targets of foreclosure-rescue schemes.

These foreclosure-rescue schemes can result in homeowners losing money, and in some instances, even their homes. Typical foreclosure-rescue transactions involve a person or business that claims to be able to assist homeowners facing foreclosure by promising replacement mortgage financing. When the foreclosure is imminent, however, rescue schemers convince homeowners that they must convey their property to purchasers in order to "save" their homes. As part of the scheme, the person or business then arranges mortgage loans in the names of "straw" buyers. Often, the lenders providing the replacement mortgage financing know or should know that that the transactions are not arms-length ones, particularly because the lenders' closing attorneys at times facilitate the transactions or, even worse, act as the buyer. The real homeowners remain in the home for a period of time and pay rent, with a promise that they can re-acquire the home at a certain date in the future. Inevitably, the promise of maintaining home ownership is illusory and homeowners eventually lose their home to the so-called "rescuers." Tragically, whatever equity the homeowners once had in their homes is often stripped away in the process and paid to rescuers or other third parties.

My Office has brought several enforcement actions to stop this type of foreclosure-rescue scheme. For example:

- In August 2007, my Office obtained a consent judgment requiring a defendant to pay \$100,000 in restitution to two homeowners by disgorging the profits he obtained from the foreclosure-rescue transactions, and a \$10,000 civil penalty.
- In mid-June 2008, the U.S. Bankruptcy Court approved a \$1.8 million settlement between my Office and ten mortgage lenders and servicers that funded or serviced loans in connection with over twenty-six fraudulent foreclosure-rescue transactions by a Massachusetts attorney.

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<sup>2</sup> We understand that the FTC has also invited comments on Rulemaking No. R911004 pertaining to mortgage loan advertising, marketing, origination and appraisals ("Mortgage Acts and Practices Rulemaking"), and we appreciate the opportunity to comment on that Rulemaking. In conjunction with the Mortgage Acts and Practices Rulemaking, we see significant opportunities for the FTC to require timely, reasonable and meaningful loan modifications from servicers, among other requirements, so to prevent continued opportunities for unscrupulous individuals and entities to prey upon desperate homeowners. We anticipate providing more specific comments related to servicer conduct in the context of the Mortgage Acts and Practices Rulemaking.

- We also brought actions against nineteen defendants, including three attorneys, whom we allege conspired to engage in several foreclosure-rescue transactions.

Given the proliferation of these schemes and the dramatic consumer harm resulting from them, in June 2007 my Office issued emergency regulations under the Massachusetts Consumer Protection Act, which became final in August 2007. These regulations prohibit foreclosure-rescue schemes and the advertising of these schemes. These regulations first define a foreclosure-rescue transaction as a transaction:

- a) by which residential property is conveyed where the person conveying the property (hereafter “homeowner”) maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and
- b) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner’s residential property.<sup>3</sup>

The regulations then prohibit offering, carrying out or advertising foreclosure-rescue transactions that result in the transfer of interest in the property.<sup>4</sup>

We believe these regulations have been a significant deterrent to these schemes in Massachusetts. We urge the FTC to:

- prohibit offering or carrying out foreclosure-rescue transactions that result in the transfer of interest in the property; and
- prohibit the advertising of foreclosure-rescue transactions.

Despite the recent decline in real estate values (these schemes thrive when distressed homeowners have some home equity available), we still believe this prohibition to be necessary, particularly for when home values eventually recover.

### **III. The Massachusetts Attorney General’s Regulatory and Enforcement Experience Concerning Advance-Fee Schemes**

The foreclosure crisis also spurred a second type of common scheme: advance-fee schemes for foreclosure-related services. Advance-fee schemes involve companies seeking to make a quick profit by claiming to help consumers obtain loan modifications or other foreclosure assistance and demanding advance fees for such services. My Office has taken significant regulatory and enforcement action with respect to these schemes. In

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<sup>3</sup> 940 C.M.R. 25.01

<sup>4</sup> 940 C.M.R. 25.00-25.03. These regulations do not prohibit foreclosure-rescue transactions that are not carried out for compensation or gain, including, transactions engaged in between or among family members or arranged by a non-profit community or non-profit housing organization.

the course of our investigations and prosecutions, we have found a significant number of out-state-companies and attorneys preying upon distressed homeowners. We therefore welcome FTC rules prohibiting these advance-fee schemes, particularly given the multi-state nature of these schemes.

In advance-fee schemes, companies reach out to desperate homeowners with promises to save their homes, typically promising to dramatically lower homeowners' interest rates. In Massachusetts, we have seen these entities advertising through mail, email, and unsolicited telephone calls to homeowners, as well as through newspapers, television, and radio. The advertisements often overstate guarantees, promising to save the home with a near 100% rate of success, or to achieve a loan modification with a new, eye-catching low rate. They also may make false claims of affiliation with a government program, or claim to have lawyers on staff to aid the homeowner. Most alarming, these entities often solicit an upfront fee — ranging anywhere from one thousand to several thousands of dollars.

In order to guard against unscrupulous foreclosure consultants, my Office enacted regulations to protect consumers against advance-fee schemes and deceptive advertising in connection with the offering or solicitation of foreclosure-related services. Specifically, the regulations prohibit various unfair and deceptive acts, including: the solicitation or acceptance of an advance fee in connection with offering or providing Foreclosure-Related Services; and the advertisement of Foreclosure-Related Services without clearly and conspicuously disclosing the precise goods and/or services offered by the promoter and how the promoter will assist persons to avoid foreclosure. Likewise, the Massachusetts regulations prohibit licensed mortgage brokers or mortgage lenders from advertising, offering or promoting such services regarding the offer, arrangement or placement of a residential mortgage loan (*i.e.*, replacement financing), without complying with all laws and regulations that apply to the marketing of mortgage loans.

These regulations define “Foreclosure-Related Services” to mean any goods or services related to, or promising assistance in connection with: (a) avoiding or delaying actual or *anticipated* foreclosure proceedings concerning residential property; or (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation.<sup>5</sup> Of note, we believe that a definition of foreclosure-related services should also encompass companies whose goods or services target homeowners who are current on their mortgages but may default in the future due to issues such as interest rate adjustments, among others. We have seen that these homeowners are preyed upon and need protection as well.

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<sup>5</sup> 940 C.M.R. 25.01 (emphasis added).

Since enactment of these regulations, my Office brought several enforcement actions against companies and individuals who were preying upon homeowners facing foreclosure by engaging in conduct prohibited by the regulations. The following illustrates our enforcement experience:

- In December 2008, we obtained a preliminary injunction against a non-lawyer whom we allege was offering to help homeowners save their homes from foreclosure by assisting them in filing for bankruptcy in exchange for a \$1,000 cash upfront fee. In many instances, the bankruptcy petitions were deficient and dismissed.
- In March 2009, we obtained a consent judgment requiring an out-of-state company, Express Modifications, Inc., d/b/a “Loan Mods By Lawyers,” to pay \$7,300 in restitution and \$25,000 in civil penalties. The company demanded advance fees from homeowners in exchange for helping them obtain loan modifications and advertised the services of a company it called “Loan Mods By Lawyers,” even though the company did not employ any attorneys.
- In April 2009, we obtained a preliminary injunction against out-of-state companies, Loan Modification Group Corporation and Mitigation LLC, and their principal, Daniel Fox, and operator, Chris Fueling. We allege that these defendants falsely advertised themselves as attorney-based experts, guaranteed drastically reduced interest rates for homeowners facing foreclosure, and solicited fees from homeowners in advance of providing any services.
- In June 2009, we obtained a preliminary injunction against out-of-state companies, H.O.P.E. Alliance and Law & Associates, LLC, and Thomas E. Law, whom we allege deceptively uses a similar name to the government-sponsored non-profit organization, HOPE NOW Alliance, and solicited advance fees, or “donations” from Massachusetts homeowners for foreclosure-related services.

Finally, although such practices may be already unfair or deceptive depending on the circumstance, the FTC may also consider promulgating rules that govern fees charged or compensation earned upon the completion of a loan modification or related service. A variety of non-profit housing counselors, many are funded by the federal government, offer loan modification assistance for free. We are concerned that borrowers are paying excessive fees to “foreclosure consultants” for services that they could otherwise receive for free. Such excessive fees could defeat the purpose of obtaining a loan modification by pushing the homeowner further into debt and leaving the homeowner no less vulnerable to foreclosure.

Further, and potentially worse, my Office is now seeing that borrowers pay or are asked to pay “foreclosure-rescue consultants” for loan modifications that contain terms that are worse than the initial mortgage loans that are in or close to default. For example, the modified loan may have a larger monthly mortgage payment than the monthly payment on the initial loan. Inevitably, such a loan modification will result in the borrower redefaulting. For a borrower to pay a fee to a foreclosure-rescue consultant for such a loan modification is unfair and only serves to exacerbate the harm to consumers and the economy. Consequently, my Office supports limiting the amount of the fee such that it is dependent on the terms of a loan modification.<sup>6</sup>

In combating these abuses, our regulations have been a vital enforcement tool. However, each week my Office learns of new abuses stemming from the foreclosure crisis, many of them coming from outside of the state. Thus, we urge the FTC to:

- prohibit the solicitation or acceptance of an advance fee in connection with offering or providing services to help a homeowner avoid foreclosure;
- prohibit the advertisement of foreclosure-related services without clearly and conspicuously disclosing the precise services offered by the promoter and how the promoter will assist persons to avoid foreclosure; and
- limit the amount of a fee that can be earned in connection with offering or providing services to help a homeowner avoid foreclosure. The amount of the fee that can be earned should be based on the terms, *i.e.*, success, of the loan modification obtained.

#### **IV. The Massachusetts Attorney General’s Experience Concerning Regulatory Exemptions for Attorneys, Mortgage Brokers and Mortgage Lenders.**

The FTC has questioned the need for the rules regulating advance-fee foreclosure-related services and foreclosure-rescue schemes to have exemptions, particularly with respect to attorneys. Our enforcement actions have repeatedly demonstrated that some professionals, including attorneys, mortgage brokers, and real estate brokers, are participating in the type of unscrupulous conduct that these rules would be designed to prevent. While a competent and ethical attorney can be a valuable asset to a homeowner trying to avoid foreclosure, attorneys should be held to the same standards as any other parties in being prohibited from transferring property to themselves, or charging upfront or excessive fees for foreclosure-related services.

In our regulations prohibiting foreclosure-rescue or advance-fee schemes, we have a narrow exemption that allows attorneys to collect an advance fee or retainer for

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<sup>6</sup> By way of example, Illinois law only allows fees based on a sliding fee scale depending on the success of the completed loan modification. 765 ILCS 940/1 *et seq.* (foreclosure consultants may charge an amount between one half to one monthly principal and interest mortgage payment, depending on result).

legal services provided in connection with the preparation and filing of a bankruptcy petition or court proceedings to avoid a foreclosure.<sup>7</sup> We have found the balance between the regulations' prohibitions and this exemption for attorneys to quite successful in curtailing fraudulent activity.<sup>8</sup> Our law enforcement experience indicates that to exempt attorneys entirely would be a mistake.

We urge the FTC to implement a narrow attorney exemption, as we have, if the FTC is inclined to implement such an exemption. Several of our prosecutions reveal that out-of-state attorneys are engaging in such conduct and we believe that the FTC's intervention is appropriate and much-needed in curbing this unfair and deceptive multi-state conduct.

## V. Recommendations

In sum, based on my Office's experiences and our regulations at 940 C.M.R. 25.00 - 25.03, I recommend that the FTC implement the following rules to ban foreclosure-rescue schemes and advance-fee schemes, and the advertising thereof, with extremely limited exemptions.

### Foreclosure-Rescue Schemes:

With respect to foreclosure-rescue schemes, I propose that the FTC should ban these schemes as we have done in Massachusetts and consider the following:

- **Definitions:** Define a Foreclosure-Rescue Transaction as a transaction (a) by which residential property is conveyed where the person conveying the property (hereafter "homeowner") maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and (b) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner's residential property.
- **Prohibitions:** Prohibit Foreclosure-Rescue Transactions by defining as an unfair or deceptive act for an individual or entity to, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, engage in, arrange, offer, promote, promise, solicit participation in, or carry out a Foreclosure-Rescue Transaction concerning residential property.

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<sup>7</sup> 940 C.M.R. 25.02(b).

<sup>8</sup> Although the FTC has not raised this question, we have also specified in our regulations that foreclosure-rescue schemes do not prohibit the solicitation or acceptance of loan application fees by licensed mortgage brokers or lenders, provided that the fee conforms to all applicable laws and regulations. We find this clarification strikes an appropriate balance as well.

- **Exemptions:** Allow a limited exemption by allowing Foreclosure-Rescue Transaction that are not carried out for compensation or gain or for potential or contingent compensation or gain, including, by way of example, such transactions engaged in between or among family members or arranged by a non-profit community or non-profit housing organization.

#### **Advance-Fee Schemes:**

With respect to advance-fee schemes, I propose that the FTC should ban these schemes as we have done in Massachusetts and consider the following:

- **Definitions:** Define “Foreclosure-Related Services” as any good or service related to, or promising assistance in connection with: (a) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation. Foreclosure-Related Services shall include the offer, arrangement or placement of a residential mortgage loan, or other loan, when those goods or services are advertised, offered or promoted in the context described in (a) and/or (b) immediately above. Define “Advance Fee” as any money or consideration paid in advance of actually receiving services.
- **Prohibitions:** Prohibit advance-fee schemes by defining as an unfair or deceptive act for an individual or entity to solicit, arrange, or accept an Advance Fee in connection with offering, arranging or providing Foreclosure-Related Services.
- **Exemptions:** Allow a limited exemption for licensed attorneys, mortgage brokers and mortgage lenders to clarify that the above prohibition does not:
  - Prohibit a licensed attorney from soliciting, arranging or accepting an advance fee or retainer for legal services in connection with (i) the preparation and filing of a bankruptcy petition, or (ii) court proceedings, to avoid a foreclosure. Provided further, however, that a licensed attorney accepting an advance fee or legal retainer in those situations must comply with all applicable laws and regulations.
  - Prohibit the solicitation, payment or acceptance of a loan application fee if the Foreclosure-Related Services at issue concern the offer, arrangement or placement of a residential mortgage loan by a licensed mortgage broker or licensed mortgage lender, provided that the loan application fee conforms with all applicable laws and regulations.

### **Advertising Restrictions:**

With respect to advertising Foreclosure-Rescue Transactions and Foreclosure-Related Services, I propose that the FTC should consider the following rules on advertising that reincorporate the above proposed definitions:

- **Restrictions:** Restrict the advertising of Foreclosure-Rescue Transactions and Foreclosure-Related Services by defining as an unfair or deceptive act for an individual or entity to:
  - advertise, offer or promote the availability of Foreclosure-Rescue Transactions or services related to Foreclosure-Rescue Transactions;
  - advertise, offer or promote Foreclosure-Related Services if the person so promoting intends to provide Foreclosure-Related Services by offering, engaging in, arranging, promoting, promising, or soliciting participation in, a Foreclosure-Rescue Transaction;
  - advertise, offer or promote Foreclosure-Related Services without disclosing, clearly and conspicuously, (i) the precise goods and/or services offered and to be provided by the promoter of Foreclosure-Related Services, and (ii) a precise description of how the promoter will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.
  - for a licensed mortgage broker or licensed mortgage lender to advertise, offer or promote Foreclosure-Related Services, where the goods or services promoted concern the offer, arrangement or placement of a residential mortgage loan (*i.e.*, replacement financing), without complying with all laws and regulations that apply to the marketing of mortgage loans.

### **Foreclosure-Related Services Fee Restrictions:**

As noted above, we also urge the FTC to consider setting fee restrictions on fees that can be earned for Foreclosure-Related Services, depending on the success of the loan modification obtained for the borrower.

## **VI. Conclusion**

Having dedicated significant resources of my Office to combating foreclosure-rescue and advance schemes, as well as predatory lending, I am pleased and encouraged by the FTC's proposal to regulate this same conduct. I urge the FTC to do so as quickly as possible to stem the continued ill effects of this conduct.

Finally, I recognize that combating these schemes and protecting the public from its aftermath will require state and federal collaboration. I hope that all federal authorities, State Attorneys General and other State regulators will work in collaboration to leverage our resources and talent, to best serve the public. I know that will continue to be my approach. If I can provide any further information or assistance related to the FTC's proposed foreclosure-rescue or advance-fee scheme rules, or any other of our common objectives, please contact me.

Respectfully Submitted,

Martha Coakley  
Attorney General  
Commonwealth of Massachusetts



cc: U.S. Senator Edward Kennedy  
U.S. Senator John Kerry  
U.S. Representative Edward J. Markey  
U.S. Representative John Olver  
U.S. Representative Richard Neal  
U.S. Representative James P. McGovern  
U.S. Representative Barney Frank  
U.S. Representative Niki Tsongas  
U.S. Representative John Tierney  
U.S. Representative William Delahunt  
U.S. Representative Michael Capuano  
U.S. Representative Stephen Lynch  
Commissioner Steven Antonakes, Massachusetts Division of Banks  
Members of the State Foreclosure Prevention Working Group

APPENDIX OF ATTACHMENTS

COMMENT OF ATTORNEY GENERAL MARTHA COAKLEY  
TO THE FEDERAL TRADE COMMISSION

1. 940 C.M.R. 25.00 – 25.03 regulations under the Consumer Protection Act, G.L. c. 93A governing foreclosure-rescue and advance-fee schemes.



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## **940 CMR 25.00: Foreclosure Rescue Transactions and Foreclosure-Related Services**

### **25.01: Definitions**

"Foreclosure Rescue Transaction" shall mean a transaction (a) by which residential property is conveyed where the person conveying the property (hereafter "homeowner") maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and (b) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner's residential property.

"Foreclosure-Related Services" shall mean any goods or services related to, or promising assistance in connection with: (a) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation. Foreclosure-Related Services shall include the offer, arrangement or placement of a residential mortgage loan, or other loan, when those goods or services are advertised, offered or promoted in the context described in (a) and/or (b) immediately above.

### **25.02 Prohibition on Foreclosure Rescue Transactions and Advance Fees for Foreclosure-Related Services**

(a) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) to, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, engage in, arrange, offer, promote, promise, solicit participation in, or carry out a Foreclosure Rescue Transaction in the Commonwealth or concerning residential property in the Commonwealth. Nothing in this subparagraph (a) shall be interpreted to prohibit Foreclosure Rescue Transactions that are not carried out for compensation or gain or for potential or contingent compensation or gain, including, by way of example, such transactions engaged in between or among family members or arranged by a non-profit community or non-profit housing organization.

(b) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) to solicit, arrange, or accept an advance fee in connection with offering, arranging or providing Foreclosure-Related Services; provided, however, that this subsection shall not prohibit a licensed attorney from soliciting, arranging or accepting an advance fee or retainer for legal services in connection with (i) the preparation and filing of a bankruptcy petition, or (ii) court proceedings, to avoid a foreclosure. Provided further, however, that a licensed attorney accepting an advance fee or legal retainer must comply with all applicable laws and regulations pertaining to such fees, including the Massachusetts Rules of Professional Conduct, specifically Rules 1.5 and 1.16. For purposes of this section, an advance fee is any money or consideration paid in advance of actually receiving services. If the Foreclosure-Related Services at issue concern the offer, arrangement or placement of a residential mortgage loan by a licensed mortgage broker or licensed mortgage lender, then this section (b) shall not prohibit the solicitation, payment or acceptance of a loan application fee provided that the fee conforms with all applicable laws and regulations, including any rules or regulations of the Commissioner of Banks.

### **25.03 Marketing of Foreclosure-Related Services**

It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a):

(a) to advertise, offer or promote the availability of Foreclosure Rescue Transactions or services related to Foreclosure Rescue Transactions;

(b) to advertise, offer or promote Foreclosure-Related Services if the person so promoting intends to provide Foreclosure-Related Services by offering, engaging in, arranging, promoting, promising, or soliciting participation in, a Foreclosure Rescue Transaction;

(c) to advertise, offer or promote Foreclosure-Related Services without disclosing, clearly and conspicuously, (i) the precise goods and/or services offered and to be provided by the promoter of Foreclosure-Related Services, and (ii) a precise description of how the promoter will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.

(d) for a licensed mortgage broker or licensed mortgage lender to advertise, offer or promote Foreclosure-Related Services, where the goods or services promoted concern the offer, arrangement or placement of a residential mortgage loan (*i.e.*, replacement financing), without complying with all laws and regulations that

apply to the marketing of mortgage loans, including, without limitation, the regulations of the Commissioner of Banks (209 CMR 32.00 et seq.) and the Office of the Attorney General (940 CMR 8.00 et seq.).