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Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

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DIANNE CORNWALL
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February 23, 2010

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

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

Dear Commissioners:

The Nevada Division of Mortgage Lending (the "Division") requests the Commission to clarify the definitions contained in section 322.2(h) of the proposed rule, and the exemption provisions for persons licensed to practice law as contained in proposed section 322.7.

As you are probably aware, the State of Nevada ranks at the top of the list when it comes to homeowner mortgage loan default rates and subsequent residential foreclosures. As part of its attempt to address this situation, the Nevada Legislature in 2009 enacted Assembly Bill 152. AB 152 authorized the Division to license and supervise persons and companies providing loan modification consultant, foreclosure consultant and covered service provider services, as those terms are defined in the law. The Division did so with the adoption of its permanent regulation R052-09, effective August 25, 2009.

I

The Division remains concerned that Nevada's homeowners are still being harmed by persons who seek to take advantage of their situations with innovative programs that fall outside of the statutory definitions contained in AB 152, and thus outside of the Division's authority to require licensing and supervision, and possibly outside the scope of the Commission's proposed rule. These programs sound good but seemingly have little chance of success, yet come with the taking of an advance consideration.

Two particular programs, described below, are currently being marketed to homeowners and professionals in the Las Vegas area. The Division requests clarification from the Commission

as to whether or not the activities so described fall within the proposed definition of "Mortgage Assistance Relief Service" contained in proposed section 322.2(h)(1). The Division has also made a request of HUD for a determination as to whether or not the person performing the services in the first scenario below described would be deemed to be a residential mortgage loan originator for purposes of HUD's proposed rule to implement the provisions of the Secure and Fair Enforcement of Mortgage Licensing Act. Taken from that request, the activity in Scenario 1 is:

A person ("X") contacts a homeowner that X believes owes more on his mortgage loan than the current market value of the home. X obtains homeowner information from various sources including searching public records, referrals from other loan originators, word of mouth, and so forth. The homeowner may or may not also be behind in his mortgage loan payments.

X advises the homeowner of the following: X represents an investor, such as a hedge fund, that has money with which to purchase numerous homeowner loans at steep discounts from the homeowners' lenders. After the purchase of a group of loans, including this particular homeowner, the investor intends to rewrite the unpaid principal balances of the homeowners' mortgage loans to an amount between 90% and 95% of each home's current market value. X advises the each homeowner that his existing note interest rate will be adjusted, generally as a fixed rate, at Prime + 3-4%, depending on the investor's yield requirements. The term to maturity will be amended either fixed for an additional 30 years or due in five years but amortized over 30 years. There may also be a pre-payment penalty. The existing mortgage, deed of trust or other security instrument will not be changed or released or re-recorded. An appraisal will be performed to determine the current market value, and assuming the homeowner otherwise qualifies according to the investor's standards [e.g. acceptable credit rating, steady employment income, 50% debt to income ratio, etc.], the loan will be purchased by the investor. There is no guaranty that the homeowner's loan will be purchased, however, or that the loan once purchased will be rewritten.

X then asks the homeowner if he would be interested in having his mortgage purchased. If the homeowner expresses an interest in the program, and pays an upfront fee ranging as high as \$6,000.00, X will review the homeowner's existing loan based on the investor's guidelines, and if the homeowner qualifies, submit it to the investor group. The investor group, once it has obtained a sufficient package of submissions from a particular lender, will negotiate the note purchase with the lender. X, after a note is successfully purchased and restructured, may receive additional compensation from the investor group.

If a homeowner's note is not purchased and restructured, X may refund a portion of its fee to the homeowner, or otherwise attempt to secure a loan modification or negotiate a "short sale".

The Division is concerned that the activities of X in arranging the sale of a mortgage loan rather than the direct modification of it do not constitute activities of a mortgage assistance relief service provider as that term is used in the Commission's proposed rule.

Scenario 2

Like X in the above scenario, a person ("Y") contacts a homeowner that Y believes is in distress regarding his mortgage payments or the value of the home, although the homeowner need not be in default under the terms of his mortgage loan. Y obtains homeowner information from various sources, but most importantly from licensed real estate brokers or agents.

Y proposes to the homeowner that Y will purchase the home from the homeowner at an agreed to price. In exchange for a quit claim deed to the home, Y will give the homeowner a promissory note for \$15,000, or some other sum, to be paid only if Y is able to successfully negotiate a short sale of the home with all lien holders of record, leaving a sufficient profit with which to pay the \$15,000 to the homeowner plus an additional sum to Y. Y promises that the final short sale documentation will require the lien holders who were lenders, not judgment creditors, to delete all credit reporting trade lines regarding the mortgage loans and to waive any rights to a deficiency against the original homeowner.

As to scenario 2, the Division is concerned that this is simply a variation on a scam to equity strip, or to collect rents (or sell to a straw buyer) prior to foreclosure and subsequent eviction of the former homeowner, now tenant. This scenario, among other things, also does not provide for an assumption by Y of the obligations secured by the underlying liens.

The Division is asking for clarification as to whether or not the activities of X would fall within the current definitions contained in the proposed rule or if section 322.2(h) should be amended to include persons who seek to arrange sales or purchases of mortgage loans with the intention of ultimately having the new owner of the loans complete the loan modifications. As 'dwelling loan holders,' the new owners would be exempt from the proposed rule, such that if the activities of X are not covered, it would appear a 'gap' would exist in coverage of the proposed rule.

The Division is also asking for clarification as to whether or not the activities of Y would fall within the meaning of a short sale as contained in the proposed rule or if section 322(h)(6) should be amended to include persons seeking to purchase homes where a subsequent short sale is part of the 'program,' at least in those situations where the homes are not in any stage of foreclosure (which might be covered under section 322.2(h)(2)).

II

Clarification is also requested as to what is meant by a "person licensed to practice law" in the state in which the consumer resides as that phrase is used in section 322.7 of the proposed rule. The Division has also asked HUD for clarification of a similar term in its proposed rule to

implement the provisions of the Secure and Fair Enforcement of Mortgage Licensing Act.

Nevada Revised Statutes section 645F.380(1), as amended by AB 152, noted above, exempts an "attorney at law" from having to license as a loan modification consultant, foreclosure consultant or covered service provider.

In its adopted regulation R052-09, the Division exempts licensed attorneys but not staff persons working for that attorney and whose activities would otherwise constitute those of a loan modification consultant, foreclosure consultant or covered service provider. (Staff persons performing solely clerical or ministerial acts are also exempt.) The Division believes this was the intent of the law.

The Division has been sued by an attorney who seeks to set aside this particular regulation based upon the claim that staff persons working under the supervision of a licensed attorney who is responsible for their conduct fall within the ambit of the attorney's exemption from the licensing requirements of the law. In other words, the attorney claims that the Division's regulation interferes with the attorney's practice of law.

Consequently, clarification as to who is included within the term "a person licensed to practice law" would be appreciated.

Thank you for your consideration.

Very truly yours,

Joseph L. Waltuch
Commissioner
State of Nevada
Division of Mortgage Lending