

As a Covered Service Provider in the State of Nevada, I applaud the efforts of the Nevada Department of Mortgage Lending that has implemented licensing and regulation for those engaged in MARS in the State of Nevada (one of the hardest hit states for foreclosure). In a matter of a few brief months, they were successful in establishing guidelines, requirements (including bonding), and regulations to weed out the majority of the scam companies that were operating in our state.

This is an effective model to examine. Anyone engaging in modification negotiation must undergo a screening process, which involves the following steps:

1. Pre-licensing classes
2. Background check
3. Application process/investigation with personal history and financial disclosure
4. Sponsorship by an approved company that obtains a bond for consumer's protection- currently a \$75,000 bond payable to the State of Nevada which names the principal and its associates

The bonding requirement very effectively weeded out many companies that did not have the credit background or financials/assets. This single requirement in my opinion did more than anything else to draw out the "scam companies". Bonds are costly and they are only granted to those companies or individuals that are deemed a "good or minimal risk". The implementation of a sizeable bond requirement should be considered. The regulations allow the collection of fees AS SERVICES ARE PERFORMED, but not the collection of up-front fees that are earned BEFORE work is completed. The regulations require the contract to state when fees are earned and only then can the company convert those funds.

The public has recourse against the modification company through various vehicles including filing a complaint with the department, going after the bond, which has a cap of \$75k currently and of course other remedies at law. Where attorneys are involved there is additional coverage in the form of Errors and Omissions insurance that may be available.

The proposed “Advance Fee Ban” would in my opinion eliminate or at best cripple the industry. The modification process is extremely labor intensive when handled responsibly to achieve maximum relief for clients. Credible organizations which have procedures, policies, internal quality control, compliance reviews of closing documents, counseling of available options, facilitation of a trial modification and eventual conversion to permanent modification etc. require a team of knowledgeable staff to handle each step effectively. Responsible firms/companies that truly endeavor to benefit their clients actually continue to counsel their client through the process. To get to the point of a successful modification, private individuals as well as attorneys or modification companies must overcome many hurdles including lost paperwork, disconnected phones, repeated requests for updated information on the client, etc. One must be very skilled at getting through these obstacles and experience in this area is key but costly.

Any rule must consider that an advance fee ban will impact any credible organization in a devastating way. Without fee income to cover the cost of a qualified team of staff, the operation would need to be severely scaled back for cost reasons. Positions would be eliminated entirely or staff would need to be replaced by less experienced people who could be procured for much less but that would not offer the skill and experience to do the job well. The public would suffer greatly as this scenario is certainly not to anyone’s benefit.

An advance fee ban would likely shut down the exact organizations that do the job well because the attorney firm/ modification company is devoting the necessary (but costly) resources to complete the job with the maximum benefit to the client.

Banks and lenders view modifications as a necessary evil in the current economic climate. Pressure from the administration has been exerted but I believe most everyone would agree the banks are not cooperating. Non-profit organizations do not advocate for the borrower. Although well meaning, they do not have the resources or legal support to

advocate for the borrower. Facilitating the completion of paperwork only gets you so far. The last year has shown most people don't get very far at all and eventually give up.

The power of the bank/lender as final judge and jury in this matter is a serious problem. Current rhetoric by various State and Federal Agencies, promotes borrowers to deal directly with the Lender- this is a tremendous conflict of interest. The lender that doesn't want to facilitate modifications is the sole determiner of the borrower's fate. There is no current appeal process for those who feel they have not been dealt a fair hand by the bank. There is currently no balance to the process. It is completely one sided. An advocate pressuring the bank/lender to offer a reasonable payment solution based on hardship factors is absolutely necessary to offer some kind of voice for the consumer.

The proposed rule really considers only the facilitation of submitting borrowers for consideration under HAMP. The reality is that lenders can offer solutions beyond HAMP but will not generally volunteer to do so. Qualified efforts by attorneys to help people stay in their home through forbearance agreements and other negotiated terms outside of HAMP are not within the capabilities of most individuals. As guidelines constantly change, the ability for distressed homeowners to stay in their home long enough to take advantage of new programs being implemented by the government is critical. Without the ability to charge for their services as they are performed, attorneys will not be able to offer their services to clients whose primary objective is staying in their home. Further, the rules don't even allow for fees to be paid except for results, which are permanent. These alternative strategies that help people stay in their homes during this time are given no value in this proposal.

The FTC rule seems to lack the perspective of a person in a distressed situation. There is great value in offering people any alternative that keeps them in their home while they try to better their situation (getting a job, getting a better paying job, etc.).

As a person who has had to go through the extensive process of licensing as a MARS consultant- including paying licensing and bonding fees, background checks, pre-licensing education, etc. – this new rule would be an extreme financial burden to me and my family and I would not be able to continue to offer my services and wait until the end of a process which could take months (and even years) to complete before getting paid a dollar.

An alternative like the one implemented in Nevada that requires bona fide services to be documented and performed before fees are earned seems to be a better system. Even escrowing funds through dedicated trust accounts is a better alternative and less of a financial burden on the consumer.

Consider this: A consumer that can't afford their current mortgage payment eventually gets a modification through a MARS company and THEN, must endure the burden of paying additionally for the services already rendered that would wipe out a portion if not all of their savings (from the modification) and once again make it impossible for the borrower to meet their obligations to all the parties. Further, if MARS companies then had to make longer term payment plans to accommodate these borrowers it could literally take years to collect even a modest fee. This is ridiculous. Some method of earning fees for services performed must be allowed under any fair rule.

Regulation and licensing may seem like a large undertaking however the solution to a massive issue often needs to be more of a long term approach. The administration's programs run through 2012 and longer to address foreclosure and modification issues so it is prudent to take the time to implement a rule that has the best long-term objectives. Many states like Nevada, Arizona and Georgia already have licensing in place or about to be implemented shortly. There is already a foundation in place through the various State Bar Associations and Mortgage Lending Divisions through which to effectively regulate these issues. The implementation of a general fee ban without consideration for the basic

elimination of effective MARS companies and attorneys from helping people in these situations seems reckless and has both negative short and long term consequences. The short-term issues have already been addressed. The long-term issues stemming from basically shutting down MARS efforts are far reaching and affect not only distressed homeowners but, society as a whole. The MARS industry needs to be allowed to operate effectively and do its part to cure the current epidemic of foreclosures in this country. The proposed measures would likely cause an increase in foreclosures across the country, flooding an already severely depressed real estate market with even more inventory that will likely drive property values further downward. A necessary part of the U.S. recovery is stabilization of the housing market. This is an ongoing struggle with no end in sight. Certainly the elimination of MARS efforts would only add to current housing market issues. The housing market recovery is pivotal to a general economic recovery for a number of reasons from employment opportunities to property value stabilization. Many lenders are rumored to have sizeable foreclosure inventory which has not even been released to the market for sale. This problem is not going away any time soon.

It seems that a long-term solution that balances a desire to protect consumers without harming those who do contact credible companies should be the ultimate goal. I believe this goal can be accomplished through regulation, licensing, and public education through the media. The Division of Mortgage Lending in Nevada used the press very effectively to get the message out about working only with licensed companies. As a result, it is a widely known fact that the industry is now regulated affording the public the protection it deserves. Certainly, the FTC would have greater resources than the Division of Mortgage Lending in Nevada to get its message out effectively.

Finally, any rule that ties the payment for services to guaranteed results is not realistic. MARS companies cannot make guarantees simply because they don't have the ultimate decision making ability. By implementing the suggested rule, the FTC is basically

suggesting that MARS companies attempt to build a successful business model on payments for services that may never be realized. If it is the intention of the FTC to ELIMINATE all credible MARS companies, this rule will do it.