

Commission's Message

Advance warning about advance fees

There were over 84,000 foreclosures in California in 2007. That number may double in 2008. It is unfortunate, but some have seized the opportunity to take advantage of vulnerable homeowners facing foreclosure. At risk are homeowners who either want to stay in their home, or who are desperate for an exit strategy that will leave their credit intact and at the same time relieve them of their home and loan. Foreclosure rescue scams are on the rise and at the heart of these schemes are the illegal and/or improper collection of advance fees.

Unscrupulous operators comb the public records to obtain information on the properties against which a notice of default has been filed. These operators then contact the borrowers with promises of rescue, but with a catch – the payment of an advance fee. Often, the advance fee is collected by credit card and range from several hundred dollars to several thousands. To induce the borrower to pay the fee, scammers tell the borrower they have the expertise and connections to ensure a loan modification can be negotiated with the borrower's lender to permanently reduce payments to sustainable levels. Or, the borrowers are told by deeding the property over (typically to an associate of the scammer) that they no longer are responsible for make payments and that their credit will not be affected. Once the property is deeded over to a third-party, the scammer then rents the property back to the owner and collects rent on top of the advance fee that was paid by the borrower. However, once the money is collected, no work is performed and the victim loses their home to foreclosure.

Of course, there are many legitimate businesses that engage in foreclosure consulting and in fact collect perfectly legal advance fees. Often, a real estate broker's foreclosure consulting services consists of assisting a borrower with a loan modification. However, any real estate broker contemplating collecting advance fees must proceed with caution. The real estate law requires that all advance fee contracts used by a broker must first be approved by the Department prior to use. The law also requires the broker to hold the money in a trust account until such time the agreed upon services are rendered. For more information, you should review Business & Professions Code Section 10085 as well as Commissioner's Regulation 2970 and 2972.

However, in cases when a notice of default has been filed, the collection of an advance fee (even under an approved contract) to perform services to save a homeowner from foreclosure is generally precluded by the Foreclosure Consultant law, found in Civil Code Sections 2945, et seq. so, while advance fees are not necessarily indicative of a scam, they may be an indicator of trouble. Knowing the rules in advance may save you or your client from being victimized.