



Wednesday, August 6, 2014

Consumers in Foreclosure: Kick'em when their Down!

On July 23, 2014, the Consumer Financial Protection Bureau ("Bureau") and the Federal Trade Commission ("FTC") jointly issued an announcement, entitled "CFPB, FTC and States Announce Sweep Against Foreclosure Relief Scammers" ("Announcement").^[i]

It seems that the perps (aka "perpetrators") are out in full force, using deception and false promises to "collect more than \$25 million in illegal fees from distressed homeowners."^[ii]

The Bureau and the FTC were joined, as well, by 15 states (collectively, the "agencies"), letting the world know about their collective "sweep against foreclosure relief scammers that used deceptive marketing tactics to rip off distressed homeowners across the country." The Bureau is filing three lawsuits against the perps, those companies and individuals that allegedly collected more than \$25 million in illegal advance fees for services that falsely promised to prevent foreclosures or renegotiate troubled mortgages. The CFPB seeks compensation for victims, civil fines, and injunctions against the scammers. The FTC is filing 6 lawsuits of their own, and the states are taking 32 actions.

The first lawsuit names Clausen & Cobb Management Company and its owners Alfred Clausen and Joshua Cobb, as well as Stephen Siringoringo and his Siringoringo Law Firm. The second lawsuit is against The Mortgage Law Group, LLP, the Consumer First Legal Group, LLC, and attorneys Thomas Macey, Jeffrey Aleman, Jason Searns, and Harold Stafford. The third lawsuit is against the Hoffman Law Group, its operators, Michael Harper, Benn Wilcox, and attorney Marc Hoffman, and its affiliated companies, Nationwide Management Solutions, Legal Intake Solutions, File Intake Solutions, and BM Marketing Group.

Here's the allegation, in brief: the scammers used deceptive marketing to persuade thousands of consumers to pay millions in illegal, upfront fees for promised mortgage modifications. Each of the scammers was a law firm or was associated with one. It is further alleged that the defendants disguised their "false promises of foreclosure relief for struggling homeowners with claims that they were performing legal work."^[iii] The plaintiffs assert that these tactics are used by foreclosure relief scams to attract victims, add credibility to their schemes, or exploit certain legal exemptions for the practice of law.

The applicable Regulation that is cited is Regulation O, previously known as the Mortgage Assistance Relief Services (MARS) Rule. The FTC actually provides a guide on this rule, called "Mortgage Assistance Relief Services Rule: A Compliance Guide for Business" ("Guide").^[iv] Generally, this Regulation bans mortgage assistance relief service providers from requesting or receiving payment from consumers for mortgage modifications before a consumer has signed a mortgage modification agreement from their lender. The Regulation also prohibits deceptive statements and requires certain disclosures when companies market mortgage assistance relief services.

Some highlights of the Guide are worth noting:

- **It's illegal to charge upfront fees.**

The foreclosure relief firm can't collect money from a customer unless it delivers – and the customer agrees to – a written offer of mortgage relief from the customer's lender or servicer.

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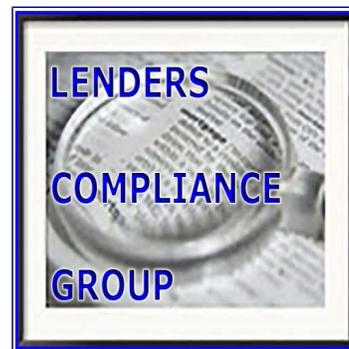


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- **The foreclosure relief firm must clearly and prominently disclose certain information before it signs people up for your services.**

It must tell customers upfront key information about its services, including:

- the total cost,
- that they can stop using the firm's services at any time,
- that the firm is not associated with the government or their lender, and
- that their lender may not agree to change the terms of their mortgage.

- **If the firm advises someone not to pay his or her mortgage, it must clearly and prominently disclose the negative consequences that could result.**

It must warn customers that failure to pay could result in the loss of their home or damage to their credit rating.

- **The firm must not advise customers to stop communicating with their lender or servicer.**

Under the Rule, it's illegal to tell people they shouldn't communicate with their lender or servicer.

- **The firm must disclose key information to its customers if it forwards an offer of mortgage relief from a lender or servicer.**

It must give the customer a written notice from the lender or servicer describing all material differences between the terms of the offer and the customer's current loan.

The firm must also tell its customers that if the lender or servicer's offer isn't acceptable to them, they don't have to pay the firm's fee.

- **The firm must not misrepresent its services.**

Under the Rule, it's illegal to make claims that are false, misleading, or unsubstantiated.

Pertinently, the Bureau also alleges that some of the defendants violated the Dodd-Frank Wall Street Reform and Consumer Protection Act, which generally prohibits deceptive practices in the consumer financial market.

Now compare the foregoing requirements under the Rule with the illegal practices alleged in the complaints:

- **Collecting fees before obtaining a loan modification:** Companies cannot legally accept payment for helping to obtain a mortgage modification for a consumer before the consumer has a modification agreement in place with their lender. All of these companies charged consumers advance fees without having first obtained modifications for them, which was not only illegal but also caused significant harm to consumers who often paid thousands of dollars without ever receiving a modification. The Bureau alleges that, after pocketing illegal fees from one distressed homeowner after another, defendants typically stopped returning consumers' phone calls and emails.
- **Inflating success rates and likelihood of obtaining a modification:** The firms' marketing materials misrepresented the likelihood that they would help consumers save substantial sums in mortgage payments. Ultimately, many consumers who paid these companies advance fees did not receive a mortgage modification and ended up worse off than they began.
- **Duping consumers into thinking they would receive legal representation:** All of these companies engaged in a particularly egregious scam where the perpetrators used their status as attorneys to dupe consumers into thinking they would receive legal representation when many consumers never spoke with an attorney or had their case reviewed by one.
- **Making false promises about loan modifications to consumers:** During meetings, some consumers were misled into believing that they were eligible for a loan modification. Other consumers were promised that they would receive relief within a few months. In the end, many consumers learned that the defendants had not contacted their lenders or obtained any meaningful relief for them. Ultimately, homeowners across the country lost thousands of dollars and suffered significant economic injury, including losing their homes.

Just to break this down a little further. Let's see what each of these defendants are alleged to have done, starting with the same order stated in the agencies' announcement.

First up is Clausen & Cobb Management Company, Inc. and Siringoringo Law Firm. The Bureau's complaint is against three individuals, Stephen Siringoringo, Alfred Clausen, Joshua Cobb, and a corporation, Clausen & Cobb Management Company, Inc. (CCMC), for allegedly charging homeowners illegal advance fees for mortgage loan modifications. Their operation charged initial fees ranging from \$1,995 to \$3,500, in addition to monthly fees of \$495, to thousands of California homeowners in distress.



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The complaint alleges that Clausen, Cobb, and CCMC managed, staffed, and supported the deceptive loan modification operations of Stephen Siringoringo's southern California law firm. The State Bar of California initially referred the misconduct to the Bureau.[v]



Secondly, there is the complaint against The Mortgage Law Group (TMLG) and the Consumer First Legal Group (CFLG), alleging that they took in over \$19.2 million in fees from over 10,000 distressed homeowners nationwide, with most, if not all, of that money coming from illegal advance fees for so-called loan modification services. Both TMLG and CFLG have ceased operations, but the Bureau is seeking redress for consumers harmed by their practices and permanent injunctive relief against the principals, Thomas Macey, Jeffrey Aleman, Jason Searns, and Harold Stafford.[vi]

The third perp is Hoffman Law Group (HLG), for allegedly accepting over \$5 million in illegal upfront fees since April 2012. The Hoffman Law Group sold consumers the chance to join mass lawsuits as a plaintiff and falsely promised them that the lawsuits will help them get mortgage loan modifications or foreclosure relief. HLG typically charged consumers an upfront fee of \$6,000 plus a \$495 monthly maintenance fee every following month. The Bureau alleges that the Hoffman Law Group frequently failed to help consumers obtain relief, and often did not answer or return phone calls and emails from consumers who had already paid their fees.

The Bureau's complaint against the Hoffman Law Group was filed jointly with the Attorney General for the State of Florida. Upon filing their complaint against the Hoffman Law Group, the Bureau and the State of Florida sought a temporary restraining order that was issued by the court, freezing the company's assets and installing a receiver to oversee the business and ensure that the company's illegal conduct ceases.

In a post published on the Bureau's blog, issued the same day as the Announcement, the Bureau's Susan Stocks offered these three "warning signs" to consumers seeking foreclosure relief:

- 1 **Demands for payment upfront.** If a lawyer or someone claiming to offer legal help wants to be paid first - before you receive a modification - they may be breaking the law. A licensed lawyer can ask you to pay first but only if the lawyer is licensed in the state where you live or where your house is located. Even a licensed lawyer in your state can only receive up-front payments if they meet other requirements about what they charge for, how they deposit the money, and if they comply with all other state laws and regulations.
- 2 **Any claim that a modification is guaranteed.** Your mortgage company must agree before you can get a modification. A lawyer or someone claiming to offer legal help cannot guarantee you will get a loan modification.
- 3 **A hard sell.** Most licensed lawyers do not call or e-mail you directly and push you hard to pay money right away. If someone claiming to be a lawyer calls you on the phone and asks you to sign papers or pay them right away, ask some more questions to be sure it's not a scam.[vii]

The post further advises the consumer that "When it comes to actually getting help with foreclosure relief, your mortgage company may require you to authorize a third party to act on your behalf, so it's important to know what this means for you." [viii] With this in mind, the Bureau has developed a new model third party authorization form the purpose of which is to prevent loan modification scam efforts. The form is to be used by representatives from government agencies as well as consumer advocacy groups, housing counselors, and the mortgage industry. According to the post, "the form may be useful for mortgage servicers who can choose to use the form in whole, or in part, by adapting other existing forms." The new model form is called "Borrower Authorization of Third Party," [ix] which provides additional questions that will help mortgage servicers build on existing privacy and fraud controls by collecting information that will make it easier for servicers to spot red flags of a foreclosure rescue scam. [x]

Those who commit foreclosure relief scams on the down and out – the perps avariciously leeching onto victims caught in the process of possibly losing their homes – ought to receive the harshest censure and opprobrium. As Euryalis declared in Virgil's Aeneid, "Me, me, adsum qui feci, in me convertite ferrum!" Which I freely translate thus: "It is !! It is !! Here I stand the perpetrator of the crime - turn then your sword on me!" [xi]

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[i] <http://www.consumerfinance.gov/newsroom/cfpb-ftc-and-states-announce-sweep-against-foreclosure-relief-scammers/>

[ii] Idem

[iii] Idem

[iv] <http://www.business.ftc.gov/documents/bus76-mortgage-assistance-relief-services-rule>

[v] Op. cit. 1. Note: the complaints may be downloaded from the cited website location.

[vi] Op. cit. 1

[vii] Smith, Stocks, Consumer advisory: Don't fall for a foreclosure relief scam or bogus legal help, July 23, 2014, <http://www.consumerfinance.gov/blog/consumer-advisory-dont-fall-for-a-foreclosure-relief-scam-or-bogus-legal-help/> The enumerated items are the exact verbiage from the post.

[viii] Idem

[ix] http://files.consumerfinance.gov/f/201407_cfpb_model-third-party-authorization-form.pdf

[x] Idem

[xi] Publius Vergilius Maro, Aeneid, Line 1346. (9.47) Another translation could be "On me, on me, who did the deed, turn your swords."



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