



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
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Governor

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Commissioner

BULLETIN NO. 08-27

TO: ALL NEW JERSEY MORTGAGE LICENSEES AND SOLICITORS, DEBT ADJUSTERS AND HUD-APPROVED HOUSING COUNSELORS AND OTHER INTERESTED PARTIES

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: "MORTGAGE LOAN MODIFICATION" ACTIVITY

The Department of Banking and Insurance ("Department") has become aware that unlicensed persons and entities and certain licensed mortgage bankers, mortgage brokers and registered solicitors have advertised and/or performed services described as "loan modification assistance," "loan modification negotiation," "loss mitigation consulting" and "foreclosure prevention consulting." The purpose of this Bulletin is to advise the regulated community and the public that such activity is subject to the Debt Adjuster's Act, N.J.S.A. 17:16G-1, et seq. ("the Act"). At N.J.S.A. 17:16G-1c(1) the Act defines a debt adjuster as a person who either:

(a) acts or offers to act for consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (b) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor.

When a "loan modification" involves revising the terms of an existing mortgage loan, and is not a purchase money mortgage, secondary mortgage loan or mortgage loan refinance transaction regulated under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., it constitutes "debt adjustment," and persons and entities engaging in such activity for a consideration are, unless exempt, required to be licensed. Any violators are subject to Departmental actions for fines and injunctive relief, criminal prosecution under N.J.S.A. 2C:21-19f, and civil lawsuits including actions under the Consumer Fraud Act. Most importantly, consumers who use the services of an unlicensed debt adjuster are exposed to potentially serious financial risks. The Act exempts from the licensure requirement New Jersey attorneys who are not principally engaged as a debt adjuster; a regular, full-time employee of a debtor who acts as an adjuster of his employer's debts; a person acting pursuant to a court order or judgment or under the authority of any New Jersey or federal law; creditors of the debtor, or an agent of a creditor of the debtor, whose debt adjustment services are rendered at no cost to the debtor; and a person who, at the request of a debtor, arranges for or makes a loan to the debtor and, with the debtor's authorization, adjusts the debtor's debts by disbursing the proceeds of the loan, without compensation for adjusting those debts. See N.J.S.A. 17:16G-1c(2).

The Act applies to both secured and unsecured debts and clearly provides that a non-exempt person or entity engaging in debt adjustment activity on mortgage loans must be licensed. Describing such activity as "mortgage modification" or with some other label will not affect the applicability of the Act to such persons.

The Department will investigate complaints relating to unlicensed debt adjustment activity and pursue appropriate remedies. Persons who wish to file a complaint with the Department may go to: <http://www.state.nj.us/dobi/consumer.htm>. More information is posted at: http://www.state.nj.us/dobi/division_consumers/finance/modifyscam.htm.

Licensed mortgage bankers and brokers should circulate this bulletin to all solicitors registered with them.

12/19/08
Date

/s/ Steven M. Goldman
Steven M. Goldman, Commissioner