

Date of Hearing: April 28, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 1730 (Wagner) – As Amended: April 23, 2014

SUBJECT: Mortgage loan modification.

SUMMARY: Enhances civil and criminal penalties for violations with respect to advance fees for loan modification services. Specifically, this bill:

- 1) Provides that a violation of existing prohibitions concerning advance fees for loan modification services could be punished as a felony, and as a civil violation resulting in a civil penalty of \$20,000 for each violation brought by a public prosecutor.
- 2) Specifies that if the victim is a disabled person, as defined under existing law, or a senior citizen, then in addition to the penalties in #1, the violator may be liable for a civil penalty of \$2,500 per violation. In determining whether to impose a civil penalty if the victim is disabled or a senior citizen and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:
 - a) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons;
 - b) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income, substantial loss of property set aside for retirement, or for personal or family care and maintenance, or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person; and,
 - c) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.
- 3) Allows a court to make orders and judgments as necessary to restore to a senior citizen or disabled person money or property, real or personal that may have been acquired by means of a violation.

EXISTING LAW

- 1) Provides that it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform; (2) Take any wage

assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation; (3) Take any power of attorney from the borrower for any purpose. (Civil Code section 2944.7(a).)

- 2) Provides that a violation of the foregoing by a natural person is punishable by a fine not exceeding \$10,000, by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding \$50,000. These penalties are cumulative to any other remedies or penalties provided by law. (Civil Code section 2944.7(b).)
- 3) Provides that any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed \$2,500 for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction. (Business and Professions Code section 17206.)
- 4) Provides that in addition to the civil penalty otherwise available, a person who violates the loan modification fee statute is liable for a civil penalty up to \$2,500 for each violation where the victim is over the age of 65 or a person with a disability, which may be assessed and recovered in a civil action by a public prosecutor. (Business and Professions Code section 17206.1)
- 5) Provides that any person who intentionally violates any injunction prohibiting unfair competition, including the mortgage loan modification fee statute, issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed \$6,000 for each violation. (Business and Professions Code section 17207.)

FISCAL EFFECT: Unknown

COMMENTS:

According to the author,

Mortgage loan modification fraud is a huge issue, especially amongst unwitting senior citizens. Due to the deflation of real property values, either (1) the liens securing the promissory note(s) for principal residential property exceeds the value of the parcel or (2) the loans which were made have resulted in mortgage payments beyond the ability of the property owners to pay. As a consequence, individuals desperate to save their homes have paid what little money they may still have in advance to individuals who claim to be able to save the home by obtaining a loan modification. These individuals then take the money, abandon the homeowners, and allow the property to be sold at foreclosure."

Under this bill, prosecutors would have the discretion to charge mortgage loan modification violations as a felony – rather than simply a misdemeanor, as permitted under existing law. In other words, the existing crime would be made a "wobbler." In addition to the criminal

penalties, a public prosecutor may bring an action for a violation and recover a civil penalty of \$20,000 per violation. In the event the victim is disabled or a senior citizen the civil penalty would be \$2,500 per violation in addition to the \$20,000 per violation penalty.

Existing law prohibits the acceptance of any advance fee in assisting a homeowner with a loan modification. This provision became law in 2009 and was a result of a cottage industry of scammers preying on struggling homeowners. Many homeowners faced the prospect of losing their home due to overpromised results from loan modification scammers that would further victimize the homeowner.

The foreclosure crisis has slowed since its heights, but concerns still remain that these scams still exist. The changes called for in AB 1730 will assist prosecutors with bringing actions and hopefully demonstrate, short of guillotine in the public square, that perpetrators of these scams will face serious consequences.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (CDAA)
Taxpayers for Improving Public Safety (TiPS)

Opposition

None on file.

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