

Date of Hearing: April 19, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2325 (Lieu) – As Amended: April 8, 2010

SUBJECT: Mortgage foreclosure consultants: loan audits.

SUMMARY: Provides that foreclosure consultant services include the audit of any obligation secured by a lien on a residence in foreclosure. Specifically, this bill:

- 1) Requires a foreclosure consultant who provides an audit of any obligation secured by a lien on a residence in foreclosure to register with the Department of Justice (DOJ).

EXISTING LAW

- 1) Defines "foreclosure consultant" as any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:
 - a) Stop or postpone the foreclosure sale;
 - b) Obtain any forbearance from any beneficiary or mortgagee;
 - c) Assist the owner to exercise the right of reinstatement provided in Section 2924c;
 - d) Obtain any extension of the period within which the owner may reinstate his or her obligation;
 - e) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage;
 - f) Assist the owner to obtain a loan or advance of funds;
 - g) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
 - h) Save the owner's residence from foreclosure; or,
 - i) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence. [Civil Code, Section 2945-2945.11]
- 2) Defines "residence in foreclosure" as residential real property consisting of one- to four-family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of default. [Civil Code Section 2945.1]

- 3) Requires a foreclosure consultant to register with, and obtain a certificate from the DOJ to provide foreclosure consultant services.
 - a) Makes it a crime to perform foreclosure consultant services without being registered with the DOJ. [Civil Code Section 2945.45]
- 4) Prohibits foreclosure consultants from claiming, demanding, charging, collecting, or receiving any compensation before fully performing the services which the foreclosure consultant was contracted to perform. [Civil Code Section 2945.4]
- 5) Allows the homeowner to cancel the contract with the foreclosure consultant until midnight on the fifth business day. [Civil Code Section 2945.2.]
- 6) Requires that every contract be in writing and fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation. Requires further than the contract be accompanied by a notice of the right of cancellation. [Civil Code Section 2945.3.]
- 7) Requires that the contract shall be written in the same language as principally used by the foreclosure consultant to describe his or services or to negotiate the contract. [Civil Code Section 2945.3 (c).]
- 8) Limits the manner, amount, and form of compensation that the foreclosure consultant may claim or demand, and generally prohibits the foreclosure consultant from acquiring any interest in the residence subject to foreclosure. [Civil Code Section 2945.4 (a)-(e).]
- 9) Prohibits a foreclosure consultant from taking any power of attorney from an owner for any purpose, except to inspect documents as provided by law. [Civil Code Section 2945.4]

FISCAL EFFECT: Unknown

COMMENTS:

This bill stems from an advisory that went out in February, 2010, by the California Attorney General along with the California Department of Real Estate (DRE) and the State Bar of California. The advisory warned consumers to avoid companies advertising to provide forensic loan audits. The loan modification industry has evolved into providing forensic loan audits in which homeowners pay up-front fees for a forensic review of their lender's practices, but are provided no actual foreclosure relief.

Individuals and businesses who offer forensic loan audits use inflated and misleading claims to convince homeowners to pay up-front fees for services that produce no actual foreclosure relief. Homeowners are encouraged to pay for an audit of their mortgage loan file to determine their lender's compliance with state and federal mortgage-lending laws. This audit is pitched to homeowners as a tool they can use to gain leverage and speed up the loan-modification process.

Those who offer forensic loan audits portray that the audit is a comprehensive review of all documentation, legal paperwork, transaction data, and other evidence pertaining to a real estate

loan that has already been funded in the near, or distant past, as well as, identifies any illegalities performed by the lender, their broker, or other parties in conjunction with the loan.

In truth, there is no evidence or statistical data to support claims that forensic loan audits-even if performed by a licensed, legitimate and trained auditor, mortgage professional or lawyer-will help homeowners obtain loan modifications or provide any other foreclosure relief.

AB 2324 does provide additional clarity that this type of behavior will not be tolerated but whether or not this bill will sway scammers from portraying themselves in this manner is another issue. The foreclosure crisis brought an influx of bad apples who wanted to get rich quick at the expense of desperate homeowners. The first and most prevalent scams were seen over the past 3 years related to collecting advance fees for loan modifications for little to no work completed. It seems the scamming industry has now evolved into providing forensic loan audit services. The upside with this new breed is the fact that current law is very clear by stating advance fees cannot be collected whether you are a foreclosure consultant, real estate broker or attorney. Forensic loan audits are not defined under current law but these scammers offer the simple service of merely looking at your loan papers for fraudulent behavior. It seems those who want to scam homeowners will continue to evolve by changing the types of services provided and the names of these services. Homeowners need to continue to be very wary of any person or business who is trying to offer them any solutions to homeownership especially if requesting an up-front fee.

By law, all individuals and businesses offering mortgage-foreclosure consulting, loan-modification and foreclosure-assistance services must register with Attorney General's office and post a \$100,000 bond. It is also illegal for loan-modification consultants and businesses to charge up-front fees for their services. Foreclosure consultants are prohibited by law from collecting money before services are performed

The Attorney General has shut down more than 30 fraudulent foreclosure-relief companies and has brought criminal charges and obtained lengthy prison sentences for dozens of deceptive loan-modification consultants.

In 2009, the DRE investigated more than 2,000 complaints involving loan-modification scams. Nearly 350 individuals and companies received a Desist and Refrain Order to stop illegal activity.

According to the author, "AB 2325 provides greater protections for vulnerable homeowners by stipulating that foreclosure consultant services include the audit of any obligation secured by a lien on a residence in foreclosure. AB 2325 also requires a foreclosure consultant to register with the DOJ to provide a forensic loan audit. With record unemployment persisting and foreclosures continuing to devastate our economy, we need to be as vigilant as we can and adapt the law to account for new scams designed to rip off homeowners. AB 2325 does this by strengthening current law to address a new scam. It will ensure people offering a forensic loan service to a homeowner comply with existing consumer protection requirements, including a ban on advance fees. This will result in fewer homeowners falling victim to this phony scam."

Overall, homeowners should not be paying up-front fees at all whether it is for an audit or a loan modification.

RECOMMENDED AMENDMENTS:

On page 4, line 18, delete "including" and delete lines 19-20 and insert "."

On page 5, below line 13, insert

"(9) Arranging or attempting to arrange an audit of any obligation secured by a lien on a residence in foreclosure."

PREVIOUS LEGISLATION:

AB 180 (Bass & Lieu) Statutes of 2008, Chapter 278) prohibits a foreclosure consultant from entering specified pre-foreclosure agreements with a homeowner, allows a homeowner to cancel within five days of signing a contract with a foreclosure consultant, and requires the foreclosure consultant to maintain a surety bond. Measure includes translation provisions to allow owners to request a completed copy of the contract if any language described in Civil Code Section 1632 (Spanish, Chinese, Tagalog, Vietnamese, and Korean).

SB 1277 (Ackerman) Chapter 177, Statutes of 2004 made minor and technical changes to the civil code related to foreclosure consultants.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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