



## Ethics Alert

### Loan Modification Scammers Recruiting Lawyers

Lawyers, particularly sole and small firm practitioners, are increasingly becoming the target of loan modification scammers seeking to recruit lawyers in an effort to circumvent state and federal legislation enacted to protect homeowners from unfair or deceptive practices, including a ban on the collection of upfront fees. Lawyers, however, are generally exempt from the legislation, and these companies are making considerable efforts to exploit this loophole by soliciting, employing and partnering with lawyers to provide purported loan modification services.

Nearly 40% of the consumer complaints against these purported "loan modification" companies reviewed by the Illinois Attorney General in 2010 had some lawyer involvement. The ARDC has also received many complaints about lawyers allegedly involved in loan modification scams and several lawyers are currently facing disciplinary prosecution by the ARDC.

These relationships may violate the Illinois Rules of Professional Conduct and could result in lawyer discipline. Do not risk your license. Recognize these fraudulent schemes for what they are – scams and avoid giving assistance to these scam artists. Here are some of the red flags:

#### Red Flags

- Accepting fees for little or no work in exchange for allowing non-lawyers to use the lawyer's name, retainer agreement and client trust account;
- Engaging in a widespread telemarketing operation staffed by non-lawyers;
- Allowing the lawyer's or law firm's name to be used in solicitations to prospective clients without actively providing legal services in connection with mortgage assistance relief services;
- Misrepresenting any material aspect of a lawyer's or law firm's legal services, including the likelihood of getting a favorable result, an affiliation with a governmental agency or other costs of their services;

- Paying a referral or marketing fee to a foreclosure consultant or other person for referring distressed homeowners to the lawyer;
- Sharing legal fees with non-lawyers;
- Partnering with non-lawyers in connection with offering mortgage assistance relief services;
- Failing to supervise subordinate attorney and non-attorney work product;
- Helping non-lawyers engage in the unauthorized practice of law;
- Failing to keep clients reasonably informed about their matters, including other available legal options and the potential for adverse outcomes; and
- Failing to work diligently and competently on behalf of clients.

For lawyers who offer mortgage assistance relief services as part of their practices, upfront fees or retainers can be accepted only if the lawyer performs legitimate legal services and the money is deposited in a client trust account and withdrawn only as actual legal services are performed and the client is notified prior to each withdrawal. The FTC has published a guide for lawyers, [\*The Mortgage Assistance Relief Services Rule: A Compliance Guide for Lawyers \(February 2011\)\*](#) as well as one for businesses, [\*The Mortgage Assistance Relief Services Rule: A Compliance Guide for Business \(February 2011\)\*](#).

### **To Report a Scam**

- Illinois Attorney General - <http://illinoisattorneygeneral.gov/consumers/index.html>
- Illinois Department of Financial & Professional Regulation - <http://www.idfpr.com/>
- Federal Trade Commission - <http://www.ftc.gov>
- Loan Modification Scam Alert Campaign - <http://www.loanscamalert.org/default.aspx>

**Ethics Questions?** Please call the ARDC Ethics Inquiry Program at either of the ARDC's offices at the telephone numbers listed below. Additional information about the ARDC Ethics Inquiry Program can be obtained at [www.iardc.org/ethics.html](http://www.iardc.org/ethics.html).

Attorney Registration and Disciplinary Commission of Illinois (ARDC)

**Chicago Office**

One Prudential Plaza  
 130 East Randolph Drive, Suite 1500  
 Chicago, IL 60601-6219  
 312/565-2600 or 800/826-8625

***Springfield Office***

One North Old Capitol Plaza, Suite 333  
Springfield, Illinois 62701-1625  
217/522-6838 or 800/252-8048

Web Site: [www.iardc.org](http://www.iardc.org)