

ORDINANCE NO. 180675

An ordinance adding Article 7.2 to Chapter IV of the Los Angeles Municipal Code to regulate mortgage modification consultants.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Article 7.2 is added to Chapter IV of the Los Angeles Municipal Code to read:

ARTICLE 7.2

MORTGAGE MODIFICATION CONSULTANTS

SEC. 47.100. Title.

This Article shall be known as the Mortgage Modification Consultant Regulations.

SEC. 47.101. Purpose.

It is the purpose of this Article to benefit the general public by preventing homeowners who are threatened with the potential foreclosure of their properties from being victimized by persons who obtain payment by falsely promising that they are able to assist homeowners in modifying the terms of loans secured by deeds of trust in order to make the loans more affordable.

This purpose is to be accomplished by requiring that persons and entities seeking to obtain payment for such services enter into a written contract with the homeowner describing the services to be performed and that the contract notify homeowners of their rights to cancel the contract, that no fees be charged or collected in advance of performance, and that any aggrieved homeowner will have a private cause of action for treble damages, costs and attorneys' fees.

SEC. 47.102. Findings.

The Los Angeles City Council finds that:

A. There is an unprecedented number of homeowners in the City of Los Angeles threatened with foreclosure;

B. At the same time, there is an unprecedented effort on the part of various governmental entities and lenders to encourage lenders and borrowers to attempt to modify mortgages in order to make such loans more affordable and to lessen, if not prevent, the possibility of foreclosure;

C. On March 4, 2009, the Obama Administration announced new U.S. Department of the Treasury guidelines to enable loan servicers to begin modifications of eligible mortgages under the Administration's Homeowner Affordability and Stability Plan;

D. There has arisen a class of people who, preying on homeowners threatened with foreclosure, falsely promise to attempt to modify mortgages in exchange for advance payment and who provide no written contract for their services, thus thwarting homeowners' attempts to sue for breach of contract when fraud becomes apparent;

E. California state law currently regulates the activities of people who offer to arrange for services purporting, among other things, to cure mortgage defaults after a property is in foreclosure as evidenced by the recording of a Notice of Default pursuant to California Civil Code Section 2924, but there exists no state regulation of such people who offer or provide such services prior to the recording of a Notice of Default; and

F. It is in the public interest that the activities of people who promise to attempt to prevent foreclosure prior to the recording of a Notice of Default be regulated. Furthermore, in order to protect homeowners from the actions of unscrupulous people who falsely promise to attempt to prevent foreclosure, remedies must be provided where unlawful activity has occurred.

G. This crisis is only expected to worsen in the upcoming months as many adjustable rate mortgages are scheduled to be reset to higher interest rates prompting a series of new foreclosures in the City of Los Angeles while, at the same time, there are unprecedented and well-publicized efforts to encourage homeowners to attempt to modify their mortgages to affordable levels.

H. The City Council enacts this Article as an urgency ordinance pursuant to Charter Section 253 to prevent the victimization of people who want to modify the terms of their existing mortgages in order to make their homes more affordable and reduce the likelihood of going into default and, thus, preserve public peace, health and safety.

SEC. 47.103. Definitions. For purposes of this Article, the following terms and phrases shall have the meanings set forth herein, unless the context clearly indicates a different meaning. Singular references also include plural and derivative uses of defined terms where capitalized.

A. **Contract.** Contract means any written agreement, or any term thereof, between a Mortgage Modification Consultant and an Owner for the rendition of any Service as defined in this Section.

B. Mortgage Modification Consultant.

(1) Mortgage Modification Consultant means 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 Mortgage Modification Consultant in any manner represents will do any of the following:

(a) Contact or negotiate with any beneficiary or mortgagee for the purposes of modifying the interest rate, principal balance, or terms of any loan prior to the recording of a Notice of Default.

(b) Prevent the recording of a Notice of Default.

(c) Obtain any forbearance from any beneficiary or mortgagee prior to the recording of a Notice of Default.

(d) Obtain any waiver of an acceleration clause contained in any promissory notice or contract secured by a deed of trust or mortgage on a Residence or contained in that deed of trust or mortgage prior to the recording of a Notice of Default.

(e) Assist an Owner to obtain a loan or advance of funds to cure a mortgage default where the property is not the subject of a recorded Notice of Default.

(f) Avoid or ameliorate the impairment of an Owner's credit resulting from the threatened recording of a Notice of Default.

(g) Save an Owner's residence from a threatened foreclosure.

(2) Mortgage Modification Consultant does not include any Person identified as exempt from the definition of "Foreclosure consultant" by Subsection (b) of Section 2945.1 of the California Civil Code.

C. Notice of Default. Notice of Default means a notice that is recorded pursuant to the provisions of California Civil Code Section 2924.

D. Owner. Owner means the record title owner of residential real property located in the City of Los Angeles.

E. Person. Person means any individual, partnership, corporation, limited liability company, association, or other entity, however organized.

F. Residence. Residence means residential real property, consisting of one or more dwelling units, one of which the Owner occupies as his or her principal place of residence, encumbered by a loan secured by a deed of trust the terms of which the Owner wishes to modify in order to reduce or fix the payments thereon, but is not the subject of a recorded Notice of Default.

G. Service. Service means and includes, but is not limited to, any of the following:

- (1) Debt, budget, or financial counseling of any type.
- (2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a Residence but prior to the recording of a Notice of Default on the Residence.
- (3) Contacting creditors on behalf of an Owner of a Residence but prior to the recording of a Notice of Default on the Residence.
- (4) Arranging or attempting to arrange for an extension of the period within which the Owner of a Residence may cure his or her default prior to the recording of a Notice of Default.
- (5) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court on behalf of an Owner of a Residence.
- (6) Giving any advice, explanation or instruction to an Owner of a Residence which in any manner relates to the cure of an existing or threatened default in, or in an obligation secured by a lien on, the Owner's Residence, or the postponement or avoidance of the recording of a Notice of Default for the Owner's Residence.

SEC. 47.104. Right of Cancellation.

A. In addition to any other right under law to rescind a contract, an owner has the right to cancel a Contract until midnight of the seventh calendar day after the day on which the Owner signs a Contract.

B. Cancellation occurs when the Owner gives written notice of cancellation to the Mortgage Modification Consultant by mail at the address specified in the Contract, or by facsimile or electronic mail at the number or address identified in the Contract.

C. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with the postage prepaid. If given by facsimile or electronic mail, notice of cancellation is effective when successfully transmitted.

D. Notice of cancellation given by the Owner need not take the particular form as provided with the Contract and, however expressed, is effective if it indicates the intention of the Owner not to be bound by the Contract.

SEC. 47.105. Contract Requirements.

A. Every Contract shall be in writing and shall fully disclose the exact nature of the Mortgage Modification Consultant's services and the total amount and terms of compensation.

B. The Contract shall be written in the same language as principally used by the Mortgage Modification Consultant to describe his or her services or to negotiate the Contract. In addition, the Mortgage Modification Consultant shall provide the Owner, before the Owner signs the Contract, with a copy of a completed Contract written in any other language used in any communication between the Mortgage Modification Consultant and the Owner, and in any language described in Subdivision (b) of California Civil Code Section 1632 if requested by the Owner. If English is the language principally used by the Mortgage Modification Consultant to describe the Mortgage Modification Consultant's services or to negotiate the Contract, the Mortgage Modification Consultant shall notify the Owner orally and in writing before the Owner signs the Contract that the Owner has the right to ask for a completed copy of the Contract in a language described in California Civil Code Section 1632.

C. The Contract shall be dated and signed by the Owner, and shall contain next to the space reserved for the Owner's signature a conspicuous statement in a size equal to at least 14-point boldface type the following language:

NOTICE REQUIRED BY THE CITY OF LOS ANGELES

You, the owner, may cancel this transaction at any time prior to midnight of the seventh calendar day after you sign this contract. Cancellation occurs when you give written notice of cancellation to the other party to this contract at the party's address identified in this contract, or by facsimile or electronic mail at the number or address identified in this contract.

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. HUD approved nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development is available from your local HUD office.

**You may also reach HUD approved counselors
through the Home Ownership Preservation Foundation.**

D. The Contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name, mailing address, electronic mail address, and facsimile number of the Mortgage Modification Consultant to which the notice of cancellation is to be mailed.

(2) The date the Owner signed the Contract.

E. The Contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the Contract, shall be easily detachable, and shall contain in type at least 14-point type the following statement written in the same language that was used in the Contract:

"NOTICE OF CANCELLATION."

F. The Mortgage Modification Consultant shall provide the Owner with a copy of the Contract and the attached notice of cancellation. An Owner's use of the notice of cancellation is optional. This section is in no way intended to limit the application of Subsection D of Section 47.104.

G. Until the Mortgage Modification Consultant has complied with this Section, the Owner may cancel the Contract.

SEC. 47.106. Violations.

It shall be a violation of this Article for a Mortgage Modification Consultant to do any of the following:

A. Perform any Service without a written Contract.

B. Claim, demand, charge, collect, or receive any compensation until after the Mortgage Modification Consultant has fully performed each and every Service the Mortgage Modification Consultant Contracted to perform or represented that he or she would perform.

C. Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. That security shall be void and unenforceable.

D. Receive any consideration from any third party in connection with Services rendered to an Owner unless that consideration is fully disclosed to the Owner at the time the Contract is entered into.

E. Acquire any interest in the Residence from an Owner with whom the Mortgage Modification Consultant has Contracted. Any interest acquired in violation of this Subsection shall be void, provided that nothing herein shall affect or defeat the title of a bona fide purchaser or encumbrancer for value and without notice of a violation of this Article. Knowledge that the property was a Residence does not constitute notice of a violation of this Article. This Subsection may not be deemed to abrogate any duty of inquiry that exists as to rights or interests of persons in possession of a Residence.

F. Take any power of attorney from an Owner for any purpose.

G. Induce or attempt to induce any Owner to enter into a Contract that does not comply in all respects with Sections 47.104 and 47.105.

SEC. 47.107. Waiver.

Any waiver by an Owner of any or all of the provisions of this Article shall be deemed void and unenforceable as contrary to public policy. Any attempt by a Mortgage Modification Consultant to induce an Owner to waive any or all of the rights provided by this Article shall be deemed a violation of this Article.

SEC. 47.108. Owner's Right of Action.

In addition to all remedies allowed by law, an Owner may bring an action against a Mortgage Modification Consultant for any violation of this Article, and a Mortgage Modification Consultant may be liable in a civil action for damages up to three times the amount of actual damages, attorneys' fees and costs of litigation.

SEC. 47.109. Liability of Mortgage Foreclosure Consultant for Damages Resulting from Statements Made, or Acts by, a Representative.

A. A Mortgage Modification Consultant is liable for all damages resulting from any statement made or act committed by the Mortgage Modification Consultant's representative in any manner connected with any of the following:

- (1) the Mortgage Modification Consultant's performance, offer to perform, or Contract to perform any Service.
- (2) the Mortgage Modification Consultant's receipt of any consideration or property from or on behalf of an Owner.
- (3) performance of any act prohibited by this Article.

B. "Representative" for the purposes of this Section means a Person who in any manner solicits, induces, or causes any of the following:

- (1) any Owner to Contract with a Mortgage Modification Consultant.

(2) any Owner to pay any consideration or transfer title to the Residence threatened with foreclosure to the Mortgage Modification Consultant.

(3) any member of the Owner's family or household to induce or cause any Owner to pay any consideration or transfer title to the Residence to the Mortgage Modification Consultant.

Sec. 2. **Statement of Intent.** It is the intent of the City Council that the provisions of this Article shall apply to Services for which an agreement to provide the Services is made on or after the effective date of this Article.

Sec. 3. **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Sec. 4. **Urgency Clause.** The City Council finds and declares that this ordinance is required for the immediate preservation of the public peace, health and safety. Therefore, this ordinance shall become effective upon publication pursuant to Los Angeles City Charter Section 253.

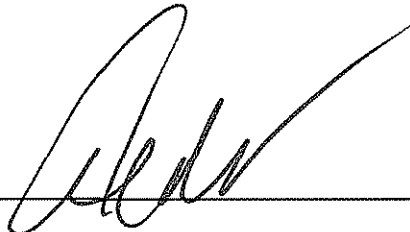
Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by a **three-fourths vote** of the Council of the City of Los Angeles, at its meeting of APR 28 2009.

KAREN E. KALFAYAN, City Clerk

By  Deputy

Approved MAY 01 2009

 Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By 
SUZANNE SPILLANE
Deputy City Attorney

Date 4/28/09

File No. 09-0319