



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-22

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July 7, 2009

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare ordinance adding Chapter 5.59 relating to the regulation of mortgage modification consultants read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

At the City Council meeting on June 2, 2009, the City Council requested the City Attorney's Office to prepare an ordinance to increase protections for City residents against individuals engaged in fraudulent mortgage loan modification schemes. The proposed ordinance is a direct response to an increase in mortgage loan modification scams that have taken place since the recent economic downturn.

The proposed ordinance strengthens the protections available to local homeowners and addresses a significant loophole in state law. Currently, state law regulates the activities of mortgage consultants only after a Notice of Default has been filed against a property. The attached ordinance would regulate the activities of mortgage consultants before a Notice of Default is filed against the property, thereby closing a significant gap in consumer protection.

Key provisions of the ordinance include the following:

1. The ordinance makes it illegal for mortgage consultants to charge an up front fee for their services;
2. The ordinance requires a written contract;
3. Homeowners must be given the right to cancel the contract within a 7-day cancellation period;

4. The ordinance increases notification requirements. The right of cancellation must be written in the contract as well as a passage alerting the borrower to the fact that free loan modification services are available from HUD-approved housing counselors;
5. Mortgage consultants cannot take a lien on the personal property or the real estate of a borrower as a form of payment; and
6. The ordinance provides for a private right of action that includes three times the amount of damages, attorneys' fees and costs of litigation if the homeowner prevails in court.

The ordinance would not apply to the activities of certain licensed professionals such as a residential mortgage lender or servicer, attorneys, employees of banks, savings and loans, trust companies, credit unions, or a person acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By 
MICHAEL J. MAIS
Assistant City Attorney

MJM/kjm

Attachment

A09-01450

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 5.59 RELATING
TO THE REGULATION OF MORTGAGE MODIFICATION
CONSULTANTS

WHEREAS, there is an unprecedented number of homeowners in the City of Long Beach threatened with foreclosure. 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 home mortgages in order to make such loans more affordable and to lessen, if not prevent, the possibility of foreclosure.

WHEREAS, certain individuals preying on homeowners threatened with foreclosure falsely promise to assist with the modification of mortgages in exchange for advance payment and provide no written contract for their services, thus compromising a homeowner's attempt to sue for breach of contract when fraud occurs. California state law currently regulates the activities of individuals or entities who offer to arrange for services purporting to cure mortgage defaults after a property is in foreclosure, but there exists no current state or City regulation of people or entities that offer or provide such services prior to the recording of a Notice of Default in a foreclosure action.

WHEREAS, it is in the public interest that the activities of those who promise to prevent foreclosures or attempt to seek loan modifications be regulated. Furthermore, in order to protect homeowners from the actions of unscrupulous people who falsely promise to attempt to prevent foreclosures, remedies must be provided where unlawful activity has occurred.

WHEREAS, the City of Long Beach as a home rule charter city has the right and power to make and enforce all laws and regulations that are its municipal affair,

1 including the power to regulate business practices to promote the health, morals, safety,
2 property, good order, well-being, general prosperity or general welfare of Long Beach
3 citizens;

4 WHEREAS, predatory loan modification practices are a widespread,
5 significant and growing problem in the City of Long Beach, and threaten the well-being
6 and general prosperity of Long Beach residents and the City as a whole. Predatory loan
7 modification practices are a significant economic drain on lower-income families and
8 communities in the City. Predatory loan modification practices also lead to conditions of
9 blight and the loss of affordable housing in Long Beach, increase displacement and
10 economic dislocation, reduce property values, erode the tax base, and increase the strain
11 on City services;

12 WHEREAS, because of socioeconomic and market conditions in Long
13 Beach which give rise to predatory loan modification practices, the regulation of said
14 practices is a municipal affair and a matter of unique local interest and concern for the
15 City of Long Beach;

16 WHEREAS, the regulation of home mortgage modification practices by the
17 City to prevent predatory practices serves the public interest, is necessary to protect the
18 health, morals, safety, property, general welfare, well being and prosperity of the
19 residents of Long Beach, and is within the home rule powers and police powers of the
20 City.

21 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
22 follows:

23 Section 1. The Long Beach Municipal Code is amended by adding Chapter
24 5.59 to read as follows:

Chapter 5.59

Mortgage Modification Consultant

5.59.010 Definitions.

For purposes of this Chapter, 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, 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 purpose 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 note or contract secured by a deed or 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

1 funds to cure a mortgage default where the property is not the subject of a
2 recorded Notice of Default;

3 f. avoid or ameliorate the impairment of an owner's
4 credit resulting from the threatened recording of a Notice of Default;

5 g. save an owner's residence from a threatened
6 foreclosure.

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

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

12 D. Owner. Owner means the record title owner or owners of
13 residential real property located in the City of Long Beach.

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

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

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

- 25 1. Debt, budget, or financial counseling of any type;
26 2. Receiving money for the purpose of distributing it to
27 creditors in payment or partial payment of any obligation secured by a lien
28 on a residence but prior to the recording of a Notice of Default on the

1 residence;

2 3. Contacting creditors on behalf of an owner of a residence
3 but prior to the recording of a Notice of Default on the residence;

4 4. Arranging or attempting to arrange for an extension of the
5 period within which the owner of a residence may cure his or her default
6 prior to the recording of a Notice of Default;

7 5. Advising the filing of any document or assisting in any
8 manner in the preparation of any document for filing with any bankruptcy
9 court on behalf of an owner of a residence;

10 6. Giving any advice, explanation or instruction to an owner
11 of a residence which in any manner relates to the cure of an existing or
12 threatened default in, or in an obligation secured by a lien on, the owner's
13 residence, or the postponement or avoidance of the recording of a Notice
14 of Default for the owner's residence.

15
16 5.59.020 Right of Cancellation.

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

20 B. Cancellation occurs when the owner gives written notice of
21 cancellation to the Mortgage Modification Consultant by mail at the
22 address specified in the contract, or by facsimile or electronic mail at the
23 number or address identified in the contract.

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

28 D. Notice of cancellation given by the owner need not take the

1 particular form as provided with the contract and, however expressed, is
2 effective if it indicates the intention of the owner not to be bound by the
3 contract.

4
5 5.59.030 Contract requirements.

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

9 B. The contract shall be written in the same language as
10 principally used by the Mortgage Modification Consultant to describe his or
11 her services or to negotiate the contract. In addition, the Mortgage
12 Modification Consultant shall provide the owner, before the owner signs
13 the contract, with a copy of the completed contract written in any other
14 language used in communication between the Mortgage Modification
15 Consultant and the owner, and in any language described in Subdivision
16 (b) of California Civil Code Section 1632 if requested by the owner. If
17 English is the language principally used by the Mortgage Modification
18 Consultant to describe the Mortgage Modification Consultant's services or
19 to negotiate the contract, the Mortgage Modification Consultant shall notify
20 the owner orally and in writing before the owner signs the contract that the
21 owner has the right to ask for a completed copy of the contract in a
22 language described in California Civil Code Section 1632.

23 C. The contract shall be dated and signed by the owner, and
24 shall contain next to the space reserved for the owner's signature a
25 conspicuous statement in a size equal to at least 14-point boldface type
26 the following language:
27
28

1 **NOTICE REQUIRED BY THE CITY OF LONG BEACH**

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

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

20 **You may also reach HUD approved counselors**
21 **through the Homeownership Preservation**
22 **Foundation.**

23 **D. The contract shall contain on the first page, in a type size no**
24 **smaller than generally used in the body of the document, each of the**
25 **following:**

26 1. The name, mailing address, electronic mail address, and
27 facsimile number of the Mortgage Modification Consultant to which the
28 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"

1 F. The Mortgage Modification Consultant shall provide the
2 owner with a copy of the contract and the attached notice of cancellation.
3 An owner's use of the notice of cancellation is optional. This section is in
4 no way intended to limit the application of Subsection D of Section
5 5.59.020.

6 G. Until the Mortgage Modification Consultant has complied
7 with this Section, the owner may cancel the contract.

8
9 5.59.040 Violations.

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

12 A. Perform any Service without a written contract.
13 B. Claim, demand, charge, collect, or receive any
14 compensation until after the Mortgage Modification Consultant has fully
15 performed each and every Service the Mortgage Modification Consultant
16 contracted to perform or represented that he or she would perform.

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

20 D. Receive any consideration from any third party in connection
21 with services rendered to an owner unless that consideration is fully
22 disclosed to the owner in writing at the time the contract is entered into.

23 E. Acquire any interest in the residence from an owner with
24 whom the Mortgage Modification Consultant has contracted. Any interest
25 acquired in violation of this Subsection shall be void, provided that nothing
26 herein shall affect or defeat the title of a bona fide purchaser or
27 encumbrancer for value and without notice of a violation of this Chapter.

28 This Subsection may not be deemed to abrogate any duty of inquiry that

1 exists as to rights or interests of persons in possession of a residence.

2 F. Take any power of attorney from an owner for any purpose.

3 G. Induce or attempt to induce any owner to enter into a contract
4 that does not comply in all respects with Sections 5.59.020 and 5.59.030
5 of this Chapter.

6
7 5.59.050 Waiver.

8 Any waiver by an owner of any or all of the provisions of this
9 Chapter shall be deemed void and unenforceable as contrary to public
10 policy. Any attempt by a Mortgage Modification Consultant to induce an
11 owner to waive any or all of the rights provided by this Chapter shall be
12 deemed a violation of this Chapter.

13
14 5.59.060 Owner's right of action.

15 In addition to all remedies allowed by law, an owner may bring an
16 action against a Mortgage Modification Consultant for any violation of this
17 Chapter, and a Mortgage Modification Consultant may be liable in a civil
18 action for damages up to three (3) times the amount of actual damages,
19 together with attorneys' fees and costs of litigation.

20
21 5.59.070 Liability of Mortgage Modification Consultant for damages
22 resulting from statements made, or acts by, a representative.

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

27 1. the Mortgage Modification Consultant's performance,
28 offer to perform, or contract to perform any service;

1 2. the Mortgage Modification Consultant's receipt of any
2 consideration or property from or on behalf of any owner;

3 3. performance of any act prohibited by this Chapter.

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

7 1. any owner to contract with a Mortgage Modification
8 Consultant.

9 2. any owner to pay any consideration or transfer title to the
10 residence threatened with foreclosure to the Mortgage Modification
11 Consultant.

12 3. any member of the owner's family or household to induce
13 or cause any owner to pay any consideration or transfer title to the
14 residence to the Mortgage Modification Consultant.

15
16 5.59.080 Statement of Intent.

17 It is the intent of the City Council that the provisions of this Chapter
18 shall apply to services for which an agreement to provide the services is
19 made on or after the effective date of this Chapter.

20
21 5.59.090 Severability.

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

27
28 Section 4. The City Clerk shall certify to the passage of this ordinance by

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 the City Council and cause it to be posted in three (3) conspicuous places in the City of
2 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
3 Mayor.

4
5 Ayes: Councilmembers: _____

6 _____

7 _____

8 _____

9 Noes: Councilmembers: _____

10 _____

11 Absent: Councilmembers: _____

12 _____

13 _____

14 _____

15 _____

City Clerk

16 _____

17 _____

18 Approved: _____

(Date)

Mayor

19 _____

20 _____

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