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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, Realtor® associations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters throughout Oregon and Washington.

Foreclosure and Loan Modification Scams

As the economic climate becomes more challenging, we start to see increasing numbers of people who attempt to help those in dire financial circumstances. Although many of these people are legitimate, and possess the skills and experience to truly help people out of sticky financial situations, there are just as many people attempting to take advantage of the desperate and unwary. This article will discuss foreclosure and loan modification experts, and what issues brokers should be aware of in working with them.

This past year, we wrote about Oregon House Bill 3630, which governs mortgage foreclosure consultants. In a subsequent article, we discussed a similar law passed in Washington that governs distressed home consultants. As you can imagine, the business of consulting with homeowners facing foreclosure has grown exponentially since these laws were passed. The laws both place restrictions on how consultants can be paid, and what rights the homeowners have in their relationships with the consultants. Real estate licensees, attorneys and other individuals are acting as consultants, attempting to negotiate with lenders in the hopes that homeowners have more time in which to bring their accounts current before their lenders follow through with their foreclosure sales.

Individuals and companies are also renegotiating loan terms with lenders on behalf of homeowners who cannot meet their current loan terms. Similar to foreclosure consultants, loan modification "experts" help homeowners attempt to work with their lenders to save their homes from foreclosure. Homeowners pay fees to loan modification experts in the hopes that they will save money on their loans, which undoubtedly carry with them high interest rates and/or increasing monthly payments.

As a result of distressed homeowners' perceived desperation and lack of real options, many individuals and companies attempt to take advantage of homeowners through various scams. Foreclosure experts, for instance, may attempt to purchase homes from their homeowner clients in order to "save" them from foreclosure. In this form of scam,

the “experts” typically purchase the homes at the lowest price possible, either negotiating short sales with the lenders or offering just enough to pay off all underlying indebtedness on the properties. Upon purchasing the properties, the scammers rent the properties back to the distressed homeowners, with a promise to sell the property back to them at some future time. Typically, the repurchase price is unrealistic, and the distressed homeowners are unable to repurchase their properties.

Another scam perpetrated by individuals and companies who claim to be foreclosure experts involves the “experts” convincing homeowners to deed their properties to them, without the “experts” assuming the underlying debts owed on the properties. The obvious result of this scam is that the homeowner loses not only his or her home, but also remains liable to the lender for the full amount of the underlying debts.

The most recent form of scam we have seen concerns loan modification, whereby the scammers promise homeowners that they will renegotiate their loans with their lenders for a fixed or variable price. Some scammers will abscond with the homeowners’ money, and fail to fulfill their obligations to help the homeowners. Others are simply unqualified, and will inaccurately claim they have expertise or access to resources. For instance, some companies indicate that they are working with lawyers, but will not disclose which lawyers. Other companies may actually consist of lawyers. However, their lawyers may not practice in the state in which the properties are located. In addition, if these lawyers are not licensed to practice in the relevant state, they may be unlawfully practicing law, and may not have appropriate experience to assist homeowners.

Homeowners are inundated with information about saving their homes through television, radio and newspaper advertisements, and through direct mail or individual contact by individuals and companies offering to help them. Although there appear to be many scammers looking to take advantage of vulnerable homeowners, there are many more that are legitimate and only intend to help out. These individuals and companies have the experience and wherewithal to assist homeowners in renegotiating their loans or buying time before their lenders foreclose on their homes. Brokers should not be selecting specific experts to assist their distressed clients. However, they may want to advise their clients to conduct appropriate due diligence before agreeing to enter into arrangements with such experts. In addition, brokers or their clients can obtain free foreclosure prevention assistance through the HOPE NOW Alliance (www.hopenow.com), which consists of HUD-approved counselors, mortgage companies, investors and others.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at info@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.