



Nonprofit Publisher
of Consumer Reports

September 18, 2009

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, CA 95814

Via Facsimile and U.S. Mail

Re: **AB 764 (Nava) Request for Signature**

Dear Governor Schwarzenegger,

Consumers Union, the non profit publisher of *Consumer Reports*, respectfully requests that you sign AB 764 (Nava) into law. This measure provides much needed consumer protections against rampant abuses by entities engaging in the rapidly growing business of offering consumers foreclosure rescue and loan modification services for an advance fee, and delivering little or no value in return.

AB 764 will prevent anyone from collecting an advance fee for loan modification consultation services until a borrower's loan is modified. This is a necessary protection which must be put into law. Current law allows Department of Real Estate (DRE) licensees to demand an advance fee for these services if they submit their advertising to the Department of Real Estate and obtain prior approval. However, this is simply not enough to provide the level of protection the public needs against this growing problem that involves many players. Consumers Union supports AB 764 because it will prohibit anyone from collecting any fee for modifying a mortgage loan until the terms of the loan have been modified. This insures that legitimate providers can continue to offer their services and be compensated by those they can truly help, but that those who are simply offering loan modification services to collect fees with no hope of delivering are stopped.

AB 764 also requires that anyone offering loan modification services for a fee must provide borrowers with a notice stating that the same loan modification services can be obtained for free elsewhere. This requirement will help inform consumers that they may be agreeing unwittingly to pay for services that are available for free, thereby reducing the market opportunities for scam artists. AB 764 also prohibits deceptive advertising used to lure borrowers into thinking they are dealing with a governmental agency or nonprofit entity, which has been a common practice used to deceive consumers and profit by their confusion.

Californians desperately need AB 764. As the state with the highest number of foreclosures in the country, more California homeowners are vulnerable to the kinds of deceptive practices AB 764 targets. According to the latest figures reported by Realtytrac.com, in August 2009 there were 92,326 foreclosure properties in California, which represents one in every 144 housing units.¹ Each one of these homeowners represents a ripe marketing opportunity for the enterprises who operate in California persuading homeowners to turn over hundreds and in many cases, thousands of dollars in advance fees for loan modification assistance. This opportunity has resulted in scores of borrowers

¹ <http://www.realtytrac.com/TrendCenter/default.aspx>

falling prey to loan modification consultants and the generation of many media reports covering the harmful effect in California.²

Over the last several months, Consumers Union has heard from homeowners who report being barraged with mailed offers and telephone calls from individuals holding themselves out as mortgage loan modification and foreclosure specialists. Typically, the pitch involves referencing the availability of “new government programs” --including the enactment of SB 1137 (Perata) and the launch of the Obama Administration Home Affordable Mortgage Program--as the enticement for selling their services for an advance fee. Ironically, the Home Affordable Mortgage Program provides free assistance to homeowners and does not require participants to pay any up front fees. Yet too many enterprises have used this initiative as a marketing ploy to confuse consumers. They purport to serve the needs of the hundreds of thousands of Californians in some stage of the foreclosure process while there are inadequate consumer protections in place to prevent abuses associated with demanding and taking up front fees for such services.

Whether offering to engage in a direct negotiation with the loan servicer on behalf of the consumer or engaging in a simple inquiry into the borrower’s foreclosure status, entities are demanding upfront fees that often bear little relationship to what is actually delivered. The usual result is that homeowners don’t receive the help they expect and are promised and are out of pocket hundreds and often thousands of dollars for services that were never delivered. In some cases, consumers report being delayed in accessing legitimate sources of assistance for free and their properties were lost in foreclosure.

At an informational hearing convened by the Senate Judiciary Committee on March 24, 2009, numerous witnesses from consumer organizations, legal services providers and law enforcement discussed the growing trend of foreclosure rescue/loan modification scams being perpetrated against consumers. A representative from the Los Angeles District Attorney’s Office testified that almost always, unsolicited offers of help where an advanced fee is demanded involve some sort of scam.

In April 2009, the City of Los Angeles banned advance fees for loan modification consultation services in response to the rash of homeowners being harmed by the practice. The practice has become so severe on a national scale that today federal regulators announced they are considering a nationwide ban on companies charging up front fees for loan modification services.³ California, however, should not wait for federal regulators to protect its citizens. Instead, California can and should lead the way by enacting AB 764 into law as a model for consumer protection against advance fee abuses.

Unless AB 764 is enacted into law, consumers will continue to lose while these entities drain money from the very individuals who are supposed to benefit from the free government programs designed to minimize unnecessary foreclosures through loan modifications. Without the protections contained in

² Said, Carolyn, “Desperate homeowners easy prey for scammers,” *San Francisco Chronicle* (March 16, 2009), available at: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/16/MN2A16DOBH.DTL>; Robinson, Edward, “Subprime swindlers reconnect to homeowners in scams,” *Bloomberg Press* (March 27, 2009), available at: http://www.bloomberg.com/apps/news?pid=20601109&sid=aUL_Qh8cOzv8&refer=home; Wasserman, Jim, “Home Front: Beware of mortgage rescue solicitors,” *Sacramento Bee* (December 12, 2008), available at: <http://www.sacbee.com/736/story/1467979.html>; Williams, Carol J., “New head of State Bar of California assails mortgage modification scammers,” *Los Angeles Times* (September 14, 2009), available at: <http://www.latimes.com/news/local/la-me-state-bar-miller14-2009sep14,0,5317755.story>

³ Puzzanghera, Jim, “Regulators consider ban on upfront fees for loan modification help,” *Los Angeles Times* (September 18, 2009), available at: <http://www.latimes.com/business/la-fi-mortgage-scams18-2009sep18,0,700322.story>

AB 764, these entities will continue to take unfair advantage of vulnerable consumers, charging them thousands of dollars and delivering little or no value. Loan modification “specialists” who prey on vulnerable homeowners also undermine the effectiveness of the governmental programs designed to help our nation achieve a sound economic recovery by minimizing unnecessary foreclosures.

For all these reasons, Consumers Union strongly supports AB 764 and respectfully requests that you sign the measure into law. Please do not hesitate to contact me should you have any questions regarding Consumers Union endorsement of AB 764.

Very truly yours,

A handwritten signature in cursive script that reads "Norma P. Garcia".

Norma P. Garcia
Senior Attorney
Consumers Union

cc: Assemblymember Pedro Nava