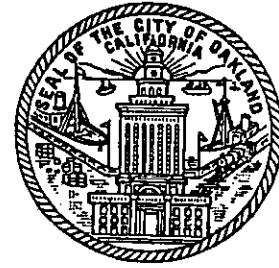


FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

BILL ANALYSIS



Date: 2009 MAY 14 PM 4:35
May 28, 2009

Bill Number: SB 94
Bill Author: Calderon, Corbett and Steinberg (Principal
coauthor: Senator Correa) (Coauthor:
Senator Florez)

DEPARTMENT INFORMATION

Contact: Jackie Campbell
Department: CEDA/HCD
Telephone: 238-7293 **FAX #** 238-3691 **E-mail:** jcampbell@oaklandnet.com

RECOMMENDED POSITION: SUPPORT IF AMENDED

Summary of the Bill

This bill will prohibit firms claiming to help consumers obtain a loan modification from receiving up-front payment for their services unless they are a licensed real estate broker.

Positive Factors for Oakland

Oakland has been hit hard by foreclosures. Vulnerable homeowners are being taken in by for-profit companies that promise to save their homes, but do little or nothing. Their promises of success are hollow because they have no control over the servicers' response to their efforts to forestall foreclosure, if any effort is made. Borrowers rely on these companies to negotiate with their loan servicers and are often advised against contacting their servicer, and find that the company has none nothing except dig them into a deeper hole. This bill would prohibit fee-for-service loan modification services.

Negative Factors for Oakland

Staff do not foresee any negative factors for Oakland

Item: _____
Rules Committee
May 28, 2009

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or** **None** (do not review with City Council, position not required)

Known support:

California Reinvestment Coalition members
Kamala D. Harris, San Francisco District Attorney
California ACORN
Consumers Union
Center for Responsible Lending
Los Angeles District Attorney's Office
Coalition for quality Credit counseling
Novadebt
Consumer Credit Counseling Service, Twin Cities
ByDesign Financial Solutions
Consumer Credit Counseling Service of Orange County
Coalition for Quality Credit Counseling
California Labor Federation, AFL-CIO

Known Opposition:

California Association of Realtors

Attach bill text and state/federal legislative committee analysis, if available.

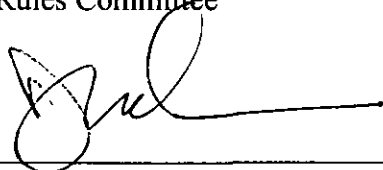
Bill text and analysis are attached

Respectfully Submitted,



Walter S. Cohen, Director
Community and Economic Agency

Approved for Forwarding to
Rules Committee



Office of City Administrator

Item: _____
Rules Committee
May 28, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 13, 2009

AMENDED IN SENATE MARCH 23, 2009

AMENDED IN SENATE MARCH 9, 2009

SENATE BILL

No. 94

**Introduced by Senator ~~Calderon~~ Senators Calderon, Corbett, and
Steinberg
(Principal coauthor: Senator Correa)
(Coauthor: Senator Florez)**

January 22, 2009

An act to amend Section 10177 of, and to add Sections 10085.6 and 10147.6 to, the Business and Professions Code, to amend Section 2945.1 of, and to add Sections 2944.6 and 2944.7 to, the Civil Code, and to amend Sections 22161 and 22301 of, and to add Sections 1243, 14962, and 50002.5 to, the Financial Code, relating to mortgage loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 94, as amended, Calderon. Mortgage loans.

(1) The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. The California Finance Lenders Law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. The California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and servicers by the Commissioner of Corporations. The Banking Law provides for the regulation of state commercial banks by the Commissioner of Financial Institutions. The California Credit Union Law provides for the regulation of state credit unions by the

Commissioner of Financial Institutions. A willful violation of specified provisions of those acts is a crime.

This bill would prohibit any person, including a real estate licensee, who, for compensation, solicits customers for, or offers to perform, mortgage loan modifications or other forms of mortgage loan forbearance from demanding or receiving any preperformance compensation, as specified, requiring any security as collateral for final compensation, or taking a power of attorney from a borrower, and would make a violation of that prohibition a misdemeanor or subject to specified fines. By creating a new crime, the bill would impose a state-mandated local program. The bill would also prohibit finance lenders and brokers, residential mortgage lenders and servicers, and state-chartered commercial banks and credit unions from charging, contracting for, or receiving any interest or charge for performing services for borrowers in connection with the modification of the terms of, or the negotiation of another form of forbearance or forgiveness in connection with, a loan secured directly or collaterally by a lien on single-family residential real property.

This bill would also require any person, including a real estate licensee, who, for compensation, solicits customers for, or offers to perform, mortgage loan modifications or other forms of mortgage loan forbearance to provide a specified 14-point bold type statement regarding loan modification fees. The bill would make a violation of that prohibition a misdemeanor or subject to specified fines, thereby creating a new crime and imposing a state-mandated local program. The bill would also provide that a real estate licensee who fails to comply with specified provisions related to mortgages, including the loan modification provisions, would be subject to disciplinary action by the Real Estate Commissioner. The bill would add to the California Finance Lenders Law a prohibition on making any false, deceptive, or misleading statement, representation, or omission in the course of a licensee's lending or brokering activities.

Because a willful violation of these provisions by certain licensees may be punished as crimes under their respective licensing laws, this bill would impose a state-mandated local program.

(2) Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, and imposes regulations upon foreclosure consultants when servicing a foreclosure sale, as specified. Existing law excludes specified persons from the definition of a foreclosure

consultant, including a person licensed under the Real Estate Law when making a direct loan or engaging in specified acts, and a person licensed to make loans as a finance lender, subject to the authority of the Commissioner of Corporations to terminate this exclusion, as specified.

This bill would instead specify that a real estate licensee and a finance lender are excluded from the definition of a foreclosure consultant when acting under the authority of that person’s license, and would delete the commissioner’s authority to terminate the finance lender’s exclusion. The bill would also delete obsolete statutory references from those provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10085.6 is added to the Business and
2 Professions Code, to read:

3 10085.6. (a) Notwithstanding any other provision of law, it
4 shall be unlawful for any licensee who solicits customers for the
5 purpose of helping negotiate a mortgage loan modification or other
6 form of mortgage loan forbearance for a fee or other compensation,
7 or who otherwise offers to perform these services for a borrower
8 for a fee or other compensation, to do any of the following:

9 (1) Claim, demand, charge, collect, or receive any compensation
10 until after the licensee has fully performed each and every service
11 the licensee contracted to perform or represented that he, she, or
12 it would perform.

13 (2) Take any wage assignment, any lien of any type on real or
14 personal property, or other security to secure the payment of
15 compensation.

16 (3) Take any power of attorney from the borrower for any
17 purpose.

18 (b) A violation of this section by a natural person who is a
19 licensee is a public offense punishable by a fine not exceeding ten
20 thousand dollars (\$10,000), by imprisonment in the county jail for

1 a term not to exceed one year, or by both that fine and
2 imprisonment, or if by a corporation, the violation is punishable
3 by a fine not exceeding fifty thousand dollars (\$50,000). These
4 penalties are cumulative to any other remedies or penalties
5 provided by law.

6 SEC. 2. Section 10147.6 is added to the Business and
7 Professions Code, to read:

8 10147.6. (a) Any licensee who solicits customers for the
9 purpose of helping negotiate a mortgage loan modification or other
10 form of mortgage loan forbearance for a fee or other form of
11 compensation, or who otherwise offers to perform these services
12 for a borrower for a fee or other form of compensation, shall
13 provide the following to the borrower, as a separate statement, in
14 not less than 14-point bold type, prior to entering into any fee
15 agreement with the borrower:

16
17 ~~IT IS NOT NECESSARY TO PAY A THIRD PARTY TO~~
18 ~~ARRANGE FOR A LOAN MODIFICATION OR OTHER FORM~~
19 ~~OF FORBEARANCE FROM YOUR MORTGAGE LENDER~~
20 ~~OR SERVICER. YOU MAY CALL YOUR LENDER DIRECTLY~~
21 ~~TO ASK FOR A CHANGE IN YOUR LOAN TERMS.~~
22 ~~NONPROFIT HOUSING COUNSELING AGENCIES ALSO~~
23 ~~OFFER THESE AND OTHER FORMS OF BORROWER~~
24 ~~ASSISTANCE FREE OF CHARGE. A LIST OF NONPROFIT~~
25 ~~HOUSING COUNSELING AGENCIES APPROVED BY THE~~
26 ~~UNITED STATES DEPARTMENT OF HOUSING AND URBAN~~
27 ~~DEVELOPMENT (HUD) IS AVAILABLE FROM YOUR~~
28 ~~LOCAL HUD OFFICE OR BY VISITING WWW.HUD.GOV.~~

29 *It is not necessary to pay a third party to arrange for a loan*
30 *modification or other form of forbearance from your mortgage*
31 *lender or servicer. You may call your lender directly to ask for a*
32 *change in your loan terms. Nonprofit housing counseling agencies*
33 *also offer these and other forms of borrower assistance free of*
34 *charge. A list of nonprofit housing counseling agencies approved*
35 *by the United States Department of Housing and Urban*
36 *Development (HUD) is available from your local HUD office or*
37 *by visiting www.hud.gov.*

38
39 (b) If loan modification or other mortgage loan forbearance
40 services are offered or negotiated in one of the foreign languages

1 set forth in Section 1632 of the Civil Code, a translated copy of
2 the statement in subdivision (a) shall be provided to the borrower
3 in that foreign language.

4 (c) A violation of this section by a natural person who is a
5 licensee is a public offense punishable by a fine not exceeding ten
6 thousand dollars (\$10,000), by imprisonment in the county jail for
7 a term not to exceed one year, or by both that fine and
8 imprisonment, or if by a corporation, the violation is punishable
9 by a fine not exceeding fifty thousand dollars (\$50,000). These
10 penalties are cumulative to any other remedies or penalties
11 provided by law.

12 SEC. 3. Section 10177 of the Business and Professions Code
13 is amended to read:

14 10177. The commissioner may suspend or revoke the license
15 of a real estate licensee, or may deny the issuance of a license to
16 an applicant, who has done any of the following, or may suspend
17 or revoke the license of a corporation, or deny the issuance of a
18 license to a corporation, if an officer, director, or person owning
19 or controlling 10 percent or more of the corporation's stock has
20 done any of the following:

21 (a) Procured, or attempted to procure, a real estate license or
22 license renewal, for himself or herself or a salesperson, by fraud,
23 misrepresentation, or deceit, or by making a material misstatement
24 of fact in an application for a real estate license, license renewal,
25 or reinstatement.

26 (b) Entered a plea of guilty or nolo contendere to, or been found
27 guilty of, or been convicted of, a felony, or a crime substantially
28 related to the qualifications, functions, or duties of a real estate
29 licensee, and the time for appeal has elapsed or the judgment of
30 conviction has been affirmed on appeal, irrespective of an order
31 granting probation following that conviction, suspending the
32 imposition of sentence, or of a subsequent order under Section
33 1203.4 of the Penal Code allowing that licensee to withdraw his
34 or her plea of guilty and to enter a plea of not guilty, or dismissing
35 the accusation or information.

36 (c) Knowingly authorized, directed, connived at, or aided in the
37 publication, advertisement, distribution, or circulation of a material
38 false statement or representation concerning his or her designation
39 or certification of special education, credential, trade organization
40 membership, or business, or concerning a business opportunity or

1 a land or subdivision, as defined in Chapter 1 (commencing with
2 Section 11000) of Part 2, offered for sale.

3 (d) Willfully disregarded or violated the Real Estate Law (Part
4 1 (commencing with Section 10000)) or Chapter 1 (commencing
5 with Section 11000) of Part 2 or the rules and regulations of the
6 commissioner for the administration and enforcement of the Real
7 Estate Law and Chapter 1 (commencing with Section 11000) of
8 Part 2.

9 (e) Willfully used the term “realtor” or a trade name or insignia
10 of membership in a real estate organization of which the licensee
11 is not a member.

12 (f) Acted or conducted himself or herself in a manner that would
13 have warranted the denial of his or her application for a real estate
14 license, or has either had a license denied or had a license issued
15 by another agency of this state, another state, or the federal
16 government revoked or suspended for acts that, if done by a real
17 estate licensee, would be grounds for the suspension or revocation
18 of a California real estate license, if the action of denial, revocation,
19 or suspension by the other agency or entity was taken only after
20 giving the licensee or applicant fair notice of the charges, an
21 opportunity for a hearing, and other due process protections
22 comparable to the Administrative Procedure Act (Chapter 3.5
23 (commencing with Section 11340), Chapter 4 (commencing with
24 Section 11370), and Chapter 5 (commencing with Section 11500)
25 of Part 1 of Division 3 of Title 2 of the Government Code), and
26 only upon an express finding of a violation of law by the agency
27 or entity.

28 (g) Demonstrated negligence or incompetence in performing
29 an act for which he or she is required to hold a license.

30 (h) As a broker licensee, failed to exercise reasonable
31 supervision over the activities of his or her salespersons, or, as the
32 officer designated by a corporate broker licensee, failed to exercise
33 reasonable supervision and control of the activities of the
34 corporation for which a real estate license is required.

35 (i) Has used his or her employment by a governmental agency
36 in a capacity giving access to records, other than public records,
37 in a manner that violates the confidential nature of the records.

38 (j) Engaged in any other conduct, whether of the same or a
39 different character than specified in this section, which constitutes
40 fraud or dishonest dealing.

1 (k) Violated any of the terms, conditions, restrictions, and
2 limitations contained in an order granting a restricted license.

3 (l) (1) Solicited or induced the sale, lease, or listing for sale or
4 lease of residential property on the ground, wholly or in part, of
5 loss of value, increase in crime, or decline of the quality of the
6 schools due to the present or prospective entry into the
7 neighborhood of a person or persons having a characteristic listed
8 in subdivision (a) or (d) of Section 12955 of the Government Code,
9 as those characteristics are defined in Sections 12926 and 12926.1,
10 subdivision (m) and paragraph (1) of subdivision (p) of Section
11 12955, and Section 12955.2 of the Government Code.

12 (2) Notwithstanding paragraph (1), with respect to familial
13 status, paragraph (1) shall not be construed to apply to housing for
14 older persons, as defined in Section 12955.9 of the Government
15 Code. With respect to familial status, nothing in paragraph (1)
16 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
17 and 799.5 of the Civil Code, relating to housing for senior citizens.
18 Subdivision (d) of Section 51 and Section 1360 of the Civil Code
19 and subdivisions (n), (o), and (p) of Section 12955 of the
20 Government Code shall apply to paragraph (1).

21 (m) Violated the Franchise Investment Law (Division 5
22 commencing with Section 31000) of Title 4 of the Corporations
23 Code) or regulations of the Commissioner of Corporations
24 pertaining thereto.

25 (n) Violated the Corporate Securities Law of 1968 (Division 1
26 commencing with Section 25000) of Title 4 of the Corporations
27 Code) or the regulations of the Commissioner of Corporations
28 pertaining thereto.

29 (o) Failed to disclose to the buyer of real property, in a
30 transaction in which the licensee is an agent for the buyer, the
31 nature and extent of a licensee's direct or indirect ownership
32 interest in that real property. The direct or indirect ownership
33 interest in the property by a person related to the licensee by blood
34 or marriage, by an entity in which the licensee has an ownership
35 interest, or by any other person with whom the licensee has a
36 special relationship shall be disclosed to the buyer.

37 (p) Violated Article 6 (commencing with Section 10237).

38 (q) Violated or failed to comply with Chapter 2 (commencing
39 with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil
40 Code, related to mortgages.

1 If a real estate broker that is a corporation has not done any of
2 the foregoing acts, either directly or through its employees, agents,
3 officers, directors, or persons owning or controlling 10 percent or
4 more of the corporation's stock, the commissioner may not deny
5 the issuance of a real estate license to, or suspend or revoke the
6 real estate license of, the corporation, provided that any offending
7 officer, director, or stockholder, who has done any of the foregoing
8 acts individually and not on behalf of the corporation, has been
9 completely disassociated from any affiliation or ownership in the
10 corporation.

11 SEC. 4. Section 2944.6 is added to the Civil Code, to read:

12 2944.6. (a) Notwithstanding any other provision of law, any
13 person who solicits customers for the purpose of helping negotiate
14 a mortgage loan modification or other form of mortgage loan
15 forbearance for a fee or other compensation, or who otherwise
16 offers to perform these services for a borrower for a fee or other
17 compensation, shall provide the following to the borrower, as a
18 separate statement, in not less than 14-point bold type, prior to
19 entering into any fee agreement with the borrower:
20

21 ~~IT IS NOT NECESSARY TO PAY A THIRD PARTY TO~~
22 ~~ARRANGE FOR A LOAN MODIFICATION OR OTHER FORM~~
23 ~~OF FORBEARANCE FROM YOUR MORTGAGE LENDER~~
24 ~~OR SERVICER. YOU MAY CALL YOUR LENDER DIRECTLY~~
25 ~~TO ASK FOR A CHANGE IN YOUR LOAN TERMS.~~
26 ~~NONPROFIT HOUSING COUNSELING AGENCIES ALSO~~
27 ~~OFFER THESE AND OTHER FORMS OF BORROWER~~
28 ~~ASSISTANCE FREE OF CHARGE. A LIST OF NONPROFIT~~
29 ~~HOUSING COUNSELING AGENCIES APPROVED BY THE~~
30 ~~UNITED STATES DEPARTMENT OF HOUSING AND URBAN~~
31 ~~DEVELOPMENT (HUD) IS AVAILABLE FROM YOUR~~
32 ~~LOCAL HUD OFFICE OR BY VISITING WWW.HUD.GOV.~~

33 *It is not necessary to pay a third party to arrange for a loan*
34 *modification or other form of forbearance from your mortgage*
35 *lender or servicer. You may call your lender directly to ask for a*
36 *change in your loan terms. Nonprofit housing counseling agencies*
37 *also offer these and other forms of borrower assistance free of*
38 *charge. A list of nonprofit housing counseling agencies approved*
39 *by the United States Department of Housing and Urban*

1 *Development (HUD) is available from your local HUD office or*
2 *by visiting www.hud.gov.*

3

4 (b) If loan modification or other mortgage loan forbearance
5 services are offered or negotiated in one of the foreign languages
6 set forth in Section 1632, a translated copy of the statement in
7 subdivision (a) shall be provided to the borrower in that foreign
8 language.

9 (c) A violation of this section by a natural person is a public
10 offense punishable by a fine not exceeding ten thousand dollars
11 (\$10,000), by imprisonment in the county jail for a term not to
12 exceed one year, or by both that fine and imprisonment, or if by
13 a corporation, the violation is punishable by a fine not exceeding
14 fifty thousand dollars (\$50,000). These penalties are cumulative
15 to any other remedies or penalties provided by law.

16 SEC. 5. Section 2944.7 is added to the Civil Code, to read:

17 2944.7. (a) Notwithstanding any other provision of law, it
18 shall be unlawful for any person who solicits customers for the
19 purpose of helping negotiate a mortgage loan modification or other
20 form of mortgage loan forbearance for a fee or other compensation,
21 or who otherwise offers to perform these services for a borrower
22 for a fee or other compensation, to do any of the following:

23 (1) Claim, demand, charge, collect, or receive any compensation
24 until after the person has fully performed each and every service
25 the person contracted to perform or represented that he or she
26 would perform.

27 (2) Take any wage assignment, any lien of any type on real or
28 personal property, or other security to secure the payment of
29 compensation.

30 (3) Take any power of attorney from the borrower for any
31 purpose.

32 (b) A violation of this section by a natural person is a public
33 offense punishable by a fine not exceeding ten thousand dollars
34 (\$10,000), by imprisonment in the county jail for a term not to
35 exceed one year, or by both that fine and imprisonment, or if by
36 a corporation, the violation is punishable by a fine not exceeding
37 fifty thousand dollars (\$50,000). These penalties are cumulative
38 to any other remedies or penalties provided by law.

39 SEC. 6. Section 2945.1 of the Civil Code is amended to read:

40 2945.1. The following definitions apply to this chapter:

- 1 (a) “Foreclosure consultant” means any person who makes any
2 solicitation, representation, or offer to any owner to perform for
3 compensation or who, for compensation, performs any service
4 which the person in any manner represents will in any manner do
5 any of the following:
- 6 (1) Stop or postpone the foreclosure sale.
 - 7 (2) Obtain any forbearance from any beneficiary or mortgagee.
 - 8 (3) Assist the owner to exercise the right of reinstatement
9 provided in Section 2924c.
 - 10 (4) Obtain any extension of the period within which the owner
11 may reinstate his or her obligation.
 - 12 (5) Obtain any waiver of an acceleration clause contained in
13 any promissory note or contract secured by a deed of trust or
14 mortgage on a residence in foreclosure or contained that deed of
15 trust or mortgage.
 - 16 (6) Assist the owner to obtain a loan or advance of funds.
 - 17 (7) Avoid or ameliorate the impairment of the owner’s credit
18 resulting from the recording of a notice of default or the conduct
19 of a foreclosure sale.
 - 20 (8) Save the owner’s residence from foreclosure.
 - 21 (9) Assist the owner in obtaining from the beneficiary,
22 mortgagee, trustee under a power of sale, or counsel for the
23 beneficiary, mortgagee, or trustee, the remaining proceeds from
24 the foreclosure sale of the owner’s residence.
- 25 (b) A foreclosure consultant does not include any of the
26 following:
- 27 (1) A person licensed to practice law in this state when the
28 person renders service in the course of his or her practice as an
29 attorney at law.
 - 30 (2) A person licensed under Division 3 (commencing with
31 Section 12000) of the Financial Code when the person is acting
32 as a prorater as defined therein.
 - 33 (3) A person licensed under Part 1 (commencing with Section
34 10000) of Division 4 of the Business and Professions Code when
35 the person is acting under the authority of that license, as described
36 in Section 10131 or 10131.1 of the Business and Professions Code.
 - 37 (4) A person licensed under Chapter 1 (commencing with
38 Section 5000) of Division 3 of the Business and Professions Code
39 when the person is acting in any capacity for which the person is
40 licensed under those provisions.

1 (5) A person or his or her authorized agent acting under the
2 express authority or written approval of the Department of Housing
3 and Urban Development or other department or agency of the
4 United States or this state to provide services.

5 (6) A person who holds or is owed an obligation secured by a
6 lien on any residence in foreclosure when the person performs
7 services in connection with this obligation or lien.

8 (7) Any person licensed to make loans pursuant to Division 9
9 (commencing with Section 22000) of the Financial Code when
10 the person is acting under the authority of that license.

11 (8) Any person or entity doing business under any law of this
12 state, or of the United States relating to banks, trust companies,
13 savings and loan associations, industrial loan companies, pension
14 trusts, credit unions, insurance companies, or any person or entity
15 authorized under the laws of this state to conduct a title or escrow
16 business, or a mortgagee which is a United States Department of
17 Housing and Urban Development approved mortgagee and any
18 subsidiary or affiliate of the above, and any agent or employee of
19 the above while engaged in the business of these persons or entities.

20 (9) A person licensed as a residential mortgage lender or servicer
21 pursuant to Division 20 (commencing with Section 50000) of the
22 Financial Code, when acting under the authority of that license.

23 (c) Notwithstanding subdivision (b), any person who provides
24 services pursuant to paragraph (9) of subdivision (a) is a foreclosure
25 consultant unless he or she is the owner's attorney.

26 (d) "Person" means any individual, partnership, corporation,
27 limited liability company, association or other group, however
28 organized.

29 (e) "Service" means and includes, but is not limited to, any of
30 the following:

31 (1) Debt, budget, or financial counseling of any type.

32 (2) Receiving money for the purpose of distributing it to
33 creditors in payment or partial payment of any obligation secured
34 by a lien on a residence in foreclosure.

35 (3) Contacting creditors on behalf of an owner of a residence
36 in foreclosure.

37 (4) Arranging or attempting to arrange for an extension of the
38 period within which the owner of a residence in foreclosure may
39 cure his or her default and reinstate his or her obligation pursuant
40 to Section 2924c.

1 (5) Arranging or attempting to arrange for any delay or
2 postponement of the time of sale of the residence in foreclosure.

3 (6) Advising the filing of any document or assisting in any
4 manner in the preparation of any document for filing with any
5 bankruptcy court.

6 (7) Giving any advice, explanation or instruction to an owner
7 of a residence in foreclosure which in any manner relates to the
8 cure of a default in or the reinstatement of an obligation secured
9 by a lien on the residence in foreclosure, the full satisfaction of
10 that obligation, or the postponement or avoidance of a sale of a
11 residence in foreclosure pursuant to a power of sale contained in
12 any deed of trust.

13 (8) Arranging or attempting to arrange for the payment by the
14 beneficiary, mortgagee, trustee under a power of sale, or counsel
15 for the beneficiary, mortgagee, or trustee, of the remaining proceeds
16 to which the owner is entitled from a foreclosure sale of the
17 owner's residence in foreclosure. Arranging or attempting to
18 arrange for the payment shall include any arrangement where the
19 owner transfers or assigns the right to the remaining proceeds of
20 a foreclosure sale to the foreclosure consultant or any person
21 designated by the foreclosure consultant, whether that transfer is
22 effected by agreement, assignment, deed, power of attorney, or
23 assignment of claim.

24 (f) "Residence in foreclosure" means a residence in foreclosure
25 as defined in Section 1695.1.

26 (g) "Owner" means a property owner as defined in Section
27 1695.1.

28 (h) "Contract" means any agreement, or any term thereof,
29 between a foreclosure consultant and an owner for the rendition
30 of any service as defined in subdivision (e).

31 SEC. 7. Section 1243 is added to the Financial Code, to read:

32 1243. (a) No bank shall directly or indirectly charge, contract
33 for, or receive any interest or charge of any nature for performing
34 services for a borrower in connection with either of the following:

35 (1) The actual or attempted modification of the terms of a loan
36 secured directly or collaterally by a lien on single-family residential
37 real property.

38 (2) The actual or attempted negotiation of another form of
39 forbearance or forgiveness in connection with a loan secured

1 directly or collaterally by a lien on single-family residential real
2 property.

3 (b) Nothing in this section precludes a bank from doing either
4 of the following:

5 (1) Collecting interest or other charges pursuant to the terms of
6 a loan that has been modified.

7 (2) Accepting payment from a federal agency in connection
8 with the federal Homeowner Affordability and Stability Plan or
9 other federal plan intended to help reduce foreclosures.

10 SEC. 8. Section 14962 is added to the Financial Code, to read:

11 14962. (a) No credit union shall directly or indirectly charge,
12 contract for, or receive any interest or charge of any nature for
13 performing services for a borrower in connection with either of
14 the following:

15 (1) The actual or attempted modification of the terms of a loan
16 secured directly or collaterally by a lien on single-family residential
17 real property.

18 (2) The actual or attempted negotiation of another form of
19 forbearance or forgiveness in connection with a loan secured
20 directly or collaterally by a lien on single-family residential real
21 property.

22 (b) Nothing in this section precludes a credit union from doing
23 either of the following:

24 (1) Collecting interest or other charges pursuant to the terms of
25 a loan that has been modified.

26 (2) Accepting payment from a federal agency in connection
27 with the federal Homeowner Affordability and Stability Plan or
28 other federal plan intended to help reduce foreclosures.

29 SEC. 9. Section 22161 of the Financial Code is amended to
30 read:

31 22161. (a) No person shall make a false, deceptive, or
32 misleading statement, representation, or omission in the course of
33 his or her lending or brokering activities.

34 (b) No person shall advertise, print, display, publish, distribute,
35 or broadcast, or cause or permit to be advertised, printed, displayed,
36 published, distributed, or broadcast in any manner, any statement
37 or representation with regard to the business subject to the
38 provisions of this division, including the rates, terms, or conditions
39 for making or negotiating loans, that is false, misleading, or
40 deceptive, or that omits material information that is necessary to

1 make the statements not false, misleading, or deceptive, or in the
2 case of a licensee, that refers to the supervision of the business by
3 the state or any department or official of the state.

4 SEC. 10. Section 22301 of the Financial Code is amended to
5 read:

6 22301. (a) No licensee shall directly or indirectly charge,
7 contract for, or receive any interest or charge of any nature with
8 respect to a loan of five thousand dollars (\$5,000) or more unless
9 the loan is made.

10 (b) Notwithstanding subdivision (a), whenever a loan of five
11 thousand dollars (\$5,000) or more is not consummated because of
12 the borrower's failure to disclose outstanding liens or other
13 information essential to making the loan or solely because of the
14 borrower's failure to complete the loan in accordance with the
15 loan application, a licensee may charge, contract for, and receive
16 an amount equal to the actual expenses incurred by the licensee
17 in connection with the preparation for the loan.

18 (c) No licensee shall directly or indirectly charge, contract for,
19 or receive any interest or charge of any nature for performing
20 services for a borrower in connection with either of the following:

21 (1) The actual or attempted modification of the terms of a loan
22 secured directly or collaterally by a lien on single-family residential
23 real property.

24 (2) The actual or attempted negotiation of another form of
25 forbearance or forgiveness in connection with a loan secured
26 directly or collaterally by a lien on single-family residential real
27 property.

28 (d) Nothing in this section precludes a licensee from doing either
29 of the following:

30 (1) Collecting interest or other charges pursuant to the terms of
31 a loan that has been modified.

32 (2) Accepting payment from a federal agency in connection
33 with the federal Homeowner Affordability and Stability Plan or
34 other federal plan intended to help reduce foreclosures.

35 SEC. 11. Section 50002.5 is added to the Financial Code, to
36 read:

37 50002.5. (a) No licensee shall directly or indirectly charge,
38 contract for, or receive any interest or charge of any nature for
39 performing services for a borrower in connection with either of
40 the following:

1 (1) The actual or attempted modification of the terms of a loan
2 secured directly or collaterally by a lien on single-family residential
3 real property.

4 (2) The actual or attempted negotiation of another form of
5 forbearance or forgiveness in connection with a loan secured
6 directly or collaterally by a lien on single-family residential real
7 property.

8 (b) Nothing in this section precludes a licensee from doing either
9 of the following:

10 (1) Collecting interest or other charges pursuant to the terms of
11 a loan that has been modified.

12 (2) Accepting payment from a federal agency in connection
13 with the federal Homeowner Affordability and Stability Plan or
14 other federal plan intended to help reduce foreclosures.

15 SEC. 12. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

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**DRAFT
OAKLAND CITY COUNCIL**_____
City AttorneyFILED
OFFICE OF THE CITY CLERK
OAKLAND**RESOLUTION No. _____ C.M.S.**

2009 MAY 14 PM 4:35

Introduced by Councilmember _____

**RESOLUTION TO SUPPORT SB 94 (CALDERON) TO REFORM
MORTGAGE LENDING PRACTICES AND PROHIBIT FEE-FOR-SERVICE
LOAN MODIFICATION SERVICES**

WHEREAS, the City of Oakland has experienced a high rate of home mortgage foreclosures and many borrowers who are finding it difficult to pay their mortgage are trying to avoid foreclosure and need assistance to refinance or obtain a loan modification; and

WHEREAS, vulnerable homeowners are taken in by for-profit companies that promise to save their homes, but do little since they have no control over the servicer's response to efforts to forestall foreclosure; if any effort is even made; and

WHEREAS, these companies offer fee for service loan modifications and often leave these families in financial ruin and heading to foreclosure; and

WHEREAS, non-profit housing counseling agencies with a mission to serve the interests of California homeowners have the expertise to negotiate loan workouts at no cost to the borrower; and

WHEREAS, Senator Ron Calderon has introduced Senate Bill 94 that would prohibit persons from charging advance fees to borrowers in connection with a loan modification, and require those who wish to charge a fee for loan modification services (after performing them) to provide a specified notice to borrowers regarding other options available to the borrower; and prohibit servicers from imposing any interest or charge for performing services for borrowers in connection with loan modifications or other forms of loan forbearance or forgiveness; and prohibit any California Finance Lender Law license from making a false, deceptive, or misleading statement, representation, or omission in connection with their lending or brokering activities; now, therefore be it

RESOLVED: That the City Council of the City of Oakland hereby supports SB 94 (Calderon) that will prohibit services claiming to help consumers obtain a loan modification from receiving up-front payment for their services unless they are a licensed real estate broker; and be it

FURTHER RESOLVED: That the city Council hereby authorizes and directs the City Administrator, and/or his designee, to work actively for the passage of SB 94.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California