

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
IN RE: MODIFY LOANS, INC.

<p>STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION</p> <hr/> <p>In re: MODIFY LOANS, INC.</p> <p>Respondent: MODIFY LOANS, INC., a California Corporation.</p>	
<p>JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General JENNIFER MINER DETHMERS, Assistant Attorney General</p> <p>1525 Sherman Street, 7th Floor Denver, CO 80203 Phone: (303) 866-5079 Fax: (303) 866-4916 Email: jennifer.dethmers@state.co.us</p>	
<p>ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH MODIFY LOANS, INC.</p>	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers Attorney General, and Respondent Modify Loans, Inc. ("Respondent" or "Modify Loans"). This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent for the conduct described below.

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I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado (“Attorney General”) and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), §§ 6-1-101, *et seq.*, C.R.S. (2008).

2. Respondent Modify Loans is a California corporation with its principal place of business at 25 Mauchly Suite 314, Irvine, California 92618. The owner of Modify Loans, Inc. is Steven Matthew Scianni. Modify Loans is not registered with the Colorado Secretary of State as a foreign entity authorized to do business in the State of Colorado.

3. Respondent and its employees, independent contractors, brokers, salespersons and/or agents have offered to negotiate or originate loan modifications for Colorado consumers.

II. FACTUAL BACKGROUND

4. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising activities of Respondent.

5. The Attorney General contends that Respondent sent misleading and deceptive direct mail solicitations to Colorado consumers.

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A. Respondent's Direct Mail Solicitation Appears To Come From Someone Other Than Respondent.

6. The Respondent's direct mail solicitation, a copy of which is attached hereto as Exhibit A, purports to cover an "Eligibility Area." The solicitation assigns a disbursement code to the recipient and states that it is the "Final Notice." (*See* Ex. A.)

7. The name of the consumer's lender appears in large font in all capital letters in the upper left hand corner of and at various other places throughout the solicitation. While the name of the consumer's lender appears in all capital letters five (5) times in the solicitation, the only indication that this "Final Notice" is coming from Respondent appears in a footnote in small font at the bottom of the solicitation. (*Id.*) Respondent does not indicate its address anywhere on the direct mail solicitation.

8. Respondent does not have the permission of the consumers' lenders to use the lenders' names in its advertising.

9. The Attorney General contends that the direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it appears to be an official notice from the consumer's lender.

B. Respondent's Mail Solicitation Contains a Misleading Payment Rate and Does Not Comply With Regulation Z.

10. The Respondent's solicitation claims that the recipient "has been pre-qualified for a **MODIFICATION** to a 30 yr. fixed rate mortgage with a **payment of only \$808.50** a

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month” on a loan amount of \$215,600. The solicitation also promotes interest rates between 3.5% and 5%. (*Id.*)

11. The monthly principal and interest payment for a \$215,600 loan at a 30-year fixed interest rate of 3.5% is \$968.15. The \$808.50 monthly payment advertised in the direct mail solicitation, however, is for an interest-only loan at an interest rate of 4.5%. Once the interest-only period expires, this monthly payment will increase to the fully-amortized payment.

12. The solicitation fails to disclose that the \$808.50 monthly payment (1) is an interest-only payment, (2) will increase once the interest-only period expires, and (3) does not include taxes and insurance.

13. Additionally, despite the fact that the Respondent’s direct mail solicitation advertises interest rates, it does not contain an Annual Percentage Rate (“APR”) in violation of Regulation Z, 12 C.F.R. § 226.24.

14. The Attorney General contends that the direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it fails to disclose that the advertised monthly payment is an interest-only payment instead of a 30-year fully amortized payment and fails to state an APR.

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C. The Respondent's Direct Mail Solicitation Improperly Offers to Modify the Recipient's Loan.

15. Respondent offers to modify the recipient's loan when it states: "This offer to modify the current terms of your mortgage could **REDUCE your monthly payments by 30% - 50%.**" The solicitation requests that the recipient "**call today to discuss how we can help you save your home.**" (*Id.*)

16. The direct mail solicitation contains a footnote in very small print with the following statements:

This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. . . . This is not an offer for a loan.

(*Id.*)

17. The Attorney General contends that the direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that Respondent offers to modify the recipient's mortgage loan in the text of the solicitation, but then attempts to disclaim that offer in a footnote. Persons cannot represent one thing in the text of an advertisement and then directly contradict that representation in a footnote in small print.

D. Respondent's Agents Acted as Mortgage Brokers Without Proper Licenses.

18. The Director of the Division of Real Estate has determined that "persons who directly or indirectly negotiate, originate *or offer or attempt to negotiate* or originate loan

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modifications for a borrower and for a commission or other thing of value are required to be licensed as mortgage brokers.” (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.) (Emphasis added.) Additionally, “persons who directly supervise individuals who negotiate, originate, or offer or attempt to negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.” (*Id.*) (Emphasis added.)

19. Through these direct mail solicitations, Respondent or its agents offered to negotiate or originate loan modifications for Colorado borrowers.

20. Respondent, however, does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

21. As such, the Attorney General contends that the Respondent and its agents offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(z) and 12-61-903(1)(a), C.R.S. (2008).

E. Summary

22. The Attorney General contends that the above misrepresentations and omissions of material facts are misleading and deceptive, may have caused significant financial harm to Colorado consumers, and have the potential to continue.

23. The Attorney General contends that these advertising and sales practices violate the CCPA, including but not limited to §§ 6-1-105(1)(b), (c), (e), (i), (u), (z), (uu), & (bbb) C.R.S. (2008).

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III. CONSIDERATION

24. Respondent enters this Assurance as a compromise and settlement of the Attorney General's allegations herein. This Assurance shall not be considered an admission of violation for any purpose. Respondent expressly denies liability under the CCPA and is entering into this Assurance to avoid further costs and litigation.

25. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. ASSURANCES

26. Respondent will not target advertisements directly to Colorado consumers.

27. The term "advertisements" includes all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

28. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) ("UCCC"); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.* C.R.S. (2008).

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29. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph.

30. Within ten (10) business days of executing this Assurance, Respondent will provide the Attorney General with the names, company names, addresses, telephone numbers, and email addresses of all persons who assisted it in creating and/or disseminating the direct mail solicitation attached as Exhibit A.

V. ENFORCEMENT

31. The obligations set forth in this Assurance are continuing under this Assurance.

32. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

33. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by Respondent of this Assurance. In such event, Respondent agrees to waive any and all defenses and counterclaims it may have had to such an action, except as to claims or

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defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

34. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

35. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

36. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

37. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

38. The person who signs this Assurance in a representative capacity for Respondent warrants that he or she is duly authorized to do so. Respondent acknowledges that it has had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represents that it has read and understands this Assurance, that it accepts the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

39. Respondent and its principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person

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acting on behalf of Respondent agrees to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

40. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent Modify Loans, Inc.:

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~~██████████~~ MAUCHLY Ste 314
IRVINE CA 92618

Email: INFO@ModifyLoans.com

Phone: 888-866-3439

Fax: 949-313-0910

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To The Attorney General at:

Jennifer Miner Dethmers
Assistant Attorney General
Antitrust, Tobacco, and Consumer Protection Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: jennifer.dethmers@state.co.us
Phone: (303) 866-5079
Fax: (303) 866-4916

Dated: 07-10-09

RESPONDENT MODIFY LOANS, INC.

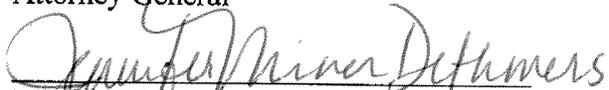
By:



Said DJahaubin - Director
Print Name and Title

Dated: 7.17.09

JOHN W. SUTHERS
Attorney General



JENNIFER MINER DETHMERS
Assistant Attorney General
Consumer Protection Section

RE: ASCENT HOME LOANS INC
ORIGINAL LOAN AMOUNT: \$215,600

Eligibility Area: Longmont, CO

STATUS:	Final Notice
DISBURSEMENT CODE:	CO 11734
ASSIGNED:	Negotiation Dept.

#1995
A RAMX306
MAX LOTTO

PROGRAM: 30yr FIXED RATE MORTGAGE - FINAL NOTICE

Dear Roy Huffman,

MATT = UNDERWRITING

Your first mortgage, originally funded by ASCENT HOME LOANS INC has been pre-qualified for a MODIFICATION to a 30 yr. fixed rate mortgage with a payment of only \$808.50 a month.

No other notices will be issued and no phone calls will be made to you regarding this notice.

Based on public records, our staff has reviewed your property information and determined that you are in a severely declining market in terms of value. This offer to modify the current terms of your mortgage could REDUCE your monthly payments by 30% - 50%. No Equity is needed, No Minimum Credit Scores, Late payments on your Mortgage are not a problem and No Appraisal is needed.

(203) 666-4494 Ruth

Rates are between 3.5% - 5%

Please give us a call today to discuss how we can help you save your home.

MODIFY LOANS
1-888-8-MODIFY or 1-888-866-3439

Please have your disbursement code ready when you call.

NOTICE EXPIRATION DATE: April 23, 2009



Information obtained from public record sources and not by ASCENT HOME LOANS INC. Modify Loans Inc. is not sponsored by or affiliated with ASCENT HOME LOANS INC. and this solicitation is not authorized by ASCENT HOME LOANS INC. This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. This is not a government agency letter, nor should it be construed as such. This is not an offer for a loan.

EXHIBIT
A

STATE OF COLORADO

Division of Real Estate

Erin Toll
Director

1560 Broadway, Suite 925
Denver, Colorado 80202
Telephone (303) 894-2166
FAX (303) 894-2683
www.dora.state.co.us/real-estate

Department of Regulatory Agencies

D. Rico Munn
Executive Director



Bill Ritter, Jr.
Governor

Department of Regulatory Agencies

Division of Real Estate

Position Statement

MB 1.5 – Loan Modifications

- Section 1. Scope and Purpose
- Section 2. Definitions
- Section 3. Applicability
- Section 4. Position Statement
- Section 5. Issuance Date

Section 1. Scope and Purpose

The Director of the Division of Real Estate finds that a position statement regarding loan modifications is necessary in order to provide clarity to the industry. The Director has learned of individuals negotiating loan modification terms for borrowers and has received many inquiries regarding the applicability of current mortgage broker law. Specifically, individuals are communicating directly with borrowers and borrowers' lenders in order to negotiate terms of a loan modification. In many instances, Colorado consumers are being charged high up front fees regardless of services rendered. The Director has also learned that consumers are being advised to cease making mortgage payments, even when already delinquent on payments. Additionally, there are existing loan modification services that are offered by U.S. Department of Housing and Urban Development (HUD) approved non-profit 501(c)3 agencies which employ housing counselors around the State of Colorado. Such HUD-approved services are offered by housing counselors for free and are not associated with any compensation or other benefit from the borrower to the housing counselor. The purpose of this position statement is to clearly notify loan modifiers (those who engage in the act of directly or indirectly negotiating a loan modification) of the applicability of Colorado mortgage broker law.

Section 2. Definitions

1. Short sale - A short sale is the sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.



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2. Loan modification - A Loan Modification is a permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and deed of trust remain intact.

Section 3. Applicability

This position statement concerns individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 4. Position Statement – MB 1.5 – Loan Modifications

1. Section 12-61-902(2), C.R.S. defines brokering a mortgage as meaning to directly or indirectly act as a mortgage broker. It is the Director's position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage brokers. Pursuant to section 12-61-903(1)(a), Colorado Revised Statutes, all persons who meet the definition of broker a mortgage are required to be licensed. As a result, persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications for a borrower, and for a commission or other thing of value are required to be licensed as mortgage brokers.
2. Additionally, persons who directly supervise individuals who negotiate, originate, or offer or attempt to negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.
3. In addition to the licensing requirements, all individuals who directly or indirectly negotiate loan modifications for borrowers and their direct supervisors are required to comply with all other provisions of Colorado mortgage broker law and Director rules. This includes, but is not limited to:
 - a. A duty of good faith and fair dealing in all communications and transactions with borrowers;
 - b. A prohibition against making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

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- c. A prohibition against soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower; and
 - d. If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, the mortgage broker may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. section 1601, and Regulation Z, 12 CFR 226, as amended.
4. The Director's position on this matter shall not be construed to include employees of non-profit HUD-approved housing counseling agencies as long as such individuals receive neither compensation nor anything of value for participation in loan modifications.
 5. The Director's position on this matter shall not be construed to include employees of mortgage loan servicing companies operating on behalf of mortgage lenders.
 6. Licensed Real Estate Brokers engaged in licensed activities when performing services within the above defined short sale transactions do not need to maintain a license as a mortgage broker. If a real estate broker engages in the activities of providing loan modification services (those not included in the activities of short sales) as defined above, loan modification services are defined as outside the scope of licensed real estate broker activities and as such separate licensure as a mortgage broker as defined in MB 1.5 Position Statement.
 7. As set forth in section 12-61-904(1)(d), C.R.S., an attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans or loan modifications is not required to be licensed as a mortgage broker, but is required to comply with all non-licensing provisions of current mortgage broker law set forth in sections 12-61-901 through 12-61-915, C.R.S.
 8. Noncompliance may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - e. Imposition of fines;

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- f. Restitution for any financial loss;
- g. Refusal to renew a license;
- h. Refusal to grant a license; and
- i. Revocation.

Section 5. Issuance Date

The Director of the Division of Real Estate issues this position statement November 19, 2008.

The Director of the Division of Real Estate revised this position statement December 11, 2008.